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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing this advisory opinion to affirm that the Equal Credit Opportunity Act and Regulation B protect not only those actively seeking credit but also those who sought and have received credit.

DATES: This advisory opinion is applicable on May 18, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Davis, Attorney-Advisor; Office of Fair Lending and Equal Opportunity, at *CFPB_FairLending@cfpb.gov* or 202–435–7000. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The CFPB is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.[1] Refer to those procedures for more information.

I. Advisory Opinion

A. Background

The Bureau is issuing this advisory opinion to affirm that the Equal Credit Opportunity Act (ECOA) [2] and Regulation B [3] protect both those actively seeking credit and those who sought and have received credit. ECOA is a landmark civil rights law that protects individuals and businesses against discrimination in accessing and using credit—''a virtual necessity of life'' for most people.[4] Congress enacted ECOA in 1974, initially to address ''widespread discrimination . . . in the granting of credit to women.'' [5] Accordingly, ECOA made it unlawful for ''any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.'' [6] From the beginning, this prohibition has protected both those actively seeking credit and those who sought and have received credit.

Then as now, ECOA defined ''applicant'' to mean ''any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.'' [7] The drafters of these provisions emphasized that ECOA's prohibition on discrimination ''applies to all credit transactions including the approval, denial, renewal, continuation, *or revocation* of any open-end consumer credit account.'' [8] Among other examples of the sort of discrimination against ''applicants'' that ECOA would bar, its drafters cited a scenario in which a lender required a ''newly married woman whose creditworthiness has otherwise remained the same'' to reapply for her existing credit arrangement as a new applicant.[9] The Act also created a private right of action under which aggrieved ''applicant[s]'' can hold liable a creditor that fails to comply with ''any requirement imposed under [ECOA].'' [10] And it provided that this private right of action extends to violations of any requirement imposed under ECOA's implementing regulations.[11]

Congress originally tasked the Board of Governors of the Federal Reserve System (Board) with prescribing those regulations.[12] The Board issued those rules, known as Regulation B, the year after ECOA was enacted and several days before the Act took effect.[13] From the beginning, Regulation B made clear that the new law's protections against credit discrimination cover both those currently applying to receive credit and those who have already received it. It did so by defining ''applicant'' to expressly include not only ''any person who applies to a creditor directly for an extension, renewal or continuation of credit'' but also, ''[w]ith respect to any creditor[,] . . . any person to whom credit is or has been extended by that creditor.'' [14] In explaining this provision, the Board noted that ECOA's express terms and its legislative history ''demonstrate that Congress intended to reach discrimination . . . 'in any aspect of a credit transaction.' '' [15]

Two years after enacting ECOA, Congress significantly broadened the Act to prohibit discrimination on bases in addition to sex and marital status.[16] These bases now generally include ''race, color, religion, national origin, sex or marital status, or age'' as well as the receipt of public-assistance income.[17] In what the Senate drafters called ''one of [the amendments'] most important provisions,'' [18] the amendments also provided that ''[e]ach applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor.'' [19] The amendments defined

[1] 85 FR 77987 (Dec. 3, 2020).

[2] 15 U.S.C. 1691 *et seq.*

[3] 12 CFR part 1002.

[4] S. Rep. 94–589, 94th Cong., 2nd Sess., at 4, *reprinted in* 1976 U.S.C.C.A.N. 403, 406.

[5] S. Rep. 93–278, 93rd Cong., 1st Sess., at 16 (1973).

[6] Public Law 93–495, sec. 503, 88 Stat. 1521, 1521 (1974).

[7] Public Law 93–495, sec. 503, 88 Stat. at 1522 (codified at 15 U.S.C. 1691a(b)).

[8] S. Rep. 93–278, at 27 (emphasis added).

[9] S. Rep. 93–278, at 17.

[10] 15 U.S.C. 1691e(a).

[11] 15 U.S.C. 1691a(g) (''Any reference to any requirement imposed under this subchapter . . . includes reference to the regulations of the Bureau under this subchapter . . . .'').

[12] Public Law 93–495, sec. 503, 88 Stat. at 1522.

[13] *See* 40 FR 49298 (Oct. 22, 1975) (promulgating 12 CFR part 202); 40 FR 42030 (Sept. 10, 1975); 40 FR 18183 (Apr. 25, 1975).

[14] 12 CFR 202.3(c) (1976); *see also* 40 FR 49306.

[15] 40 FR 49298 (quoting 15 U.S.C. 1691(a)).

[16] *See* ECOA Amendments of 1976, Public Law 94–239, 90 Stat. 251.

[17] ECOA Amendments of 1976, Public Law 94–239, sec. 2, 90 Stat. 251 (codified at 15 U.S.C. 1691(a)). In 2021, the CFPB issued an interpretive rule to clarify that, with respect to any aspect of a credit transaction, the prohibition against sex discrimination in ECOA and Regulation B encompasses sexual orientation discrimination and gender identity discrimination, including discrimination based on actual or perceived nonconformity with sex-based or gender-based stereotypes and discrimination based on an applicant's associations. 86 FR 14363 (Mar. 16, 2021).

[18] S. Rep. 94–589, 94th Cong., 2nd Sess., at 2, *reprinted in* 1976 U.S.C.C.A.N. 403, 404.

[19] 15 U.S.C. 1691(d)(2); *see also* 15 U.S.C. 1691(d)(3) (''A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.''). In lieu of providing this statement of specific reasons, a creditor may instead disclose the applicant's right

Continued

''adverse action'' as ''a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.'' [20] Thus, since 1976, ECOA has provided that ''applicants'' are entitled to an explanation when the terms of an existing credit arrangement are altered or the credit cancelled outright, among other circumstances.

ECOA's notice requirements ''were designed to fulfill the twin goals of consumer protection and education.'' [21] In terms of consumer protection, ''the notice requirement is intended to prevent discrimination *ex ante* because 'if creditors know they must explain their decisions . . . they [will] effectively be discouraged' from discriminatory practices.'' [22] The notice requirement ''fulfills a broader need'' as well by educating consumers about the reasons for the creditor's action.[23] As a result of being informed of the specific reasons for the adverse action, consumers can take steps to try to improve their credit status or, in cases ''where the creditor may have acted on misinformation or inadequate information[,] . . . to rectify the mistake.'' [24]

Following the ECOA Amendments of 1976, the Board amended Regulation B, including by adding new provisions to implement ECOA's notice requirement.[25] The amended rule defined ''adverse action'' to include ''[a] termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts.'' [26] And it required that adverse action notices give a ''statement of reasons'' for the action that is ''specific'' and ''indicate[s] the principal reason(s) for the adverse action.'' [27]

Finally, the Board made a ''minor editorial change'' to Regulation B's definition of ''applicant'' in order to ''express more succinctly the fact that the term includes both a person who requests credit and a debtor,'' a debtor being one who has already requested and received credit.[28] Whereas Regulation B originally defined ''applicant'' to include one who ''applies to a creditor directly for an extension, renewal or continuation of credit'' as well as, ''[w]ith respect to any creditor[,] . . . any person to whom credit is or has been extended by that creditor,'' [29] the revised definition simply stated that ''applicant'' includes ''any person who requests or *who has received* an extension of credit from a creditor.'' [30] Although the Board revised other parts of the definition over the years, it never departed from the bedrock understanding of the term ''applicant'' as including any person ''who has received'' an extension of credit.[31]

The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in 2010, revoked primary rulemaking responsibility under ECOA from the Board and transferred it to the newly created Bureau.[32]

Shortly thereafter, the Bureau republished the Board's ECOA regulations, including the definition of ''applicant,'' without material change.[33] In addition, the Bureau's *Supervision and Examination Manual* makes clear that creditors subject to the Bureau's supervisory jurisdiction must comply with ECOA and Regulation B's requirements with respect to existing accounts. For instance, the Examination Manual explains that ''[n]otification of adverse action taken on an *existing* account must also be made within 30 days.'' [34]

B. Coverage

This advisory opinion applies to all ''creditors'' as defined in section 702 of ECOA.[35] As used in this advisory opinion, ''existing account holder'' refers to an applicant who has applied for and received an extension of credit. ''Existing account'' or ''existing credit arrangement'' refers to an extension of credit previously made by a creditor other than an extension of credit that is closed or inactive. This advisory opinion has no application to any other circumstance and does not offer a legal interpretation of any other provisions of law.

C. Legal Analysis

ECOA and Regulation B plainly protect applicants who have received credit and are existing account holders, not just those in the process of applying for credit. This has been the longstanding position of the Bureau, and the view of Federal agencies prior to the Bureau's creation. Despite this well-established interpretation,[36] the Bureau is aware that some creditors fail to acknowledge that ECOA and Regulation B plainly apply to circumstances that take place after an extension of credit has been granted, including a revocation of credit or an unfavorable change in the terms of a credit arrangement.[37] In addition, the Bureau is aware that some creditors fail to provide applicants with required notifications that include a statement of the specific reasons for the adverse action taken or disclose an applicant's right to such a statement.[38] But ECOA's

to receive such a statement. 15 U.S.C. 1691(d)(2)(B); *see also* 12 CFR 1002.9(a)(2)(ii).

[20] 15 U.S.C. 1691(d)(6).

[21] *Fischl* v. *Gen. Motors Acceptance Corp.,* 708 F.2d 143, 146 (5th Cir. 1983); *see also id.* (calling these provisions ''[p]erhaps the most significant of the 1976 amendments to the ECOA'').

[22] *Treadway* v. *Gateway Chevrolet Oldsmobile Inc.,* 362 F.3d 971, 977–78 (7th Cir. 2004) (quoting *Fischl,* 708 F.2d at 146); *see also* S. Rep. 94–589, at 4 (calling the notice requirement ''a strong and necessary adjunct to the antidiscrimination purpose of the legislation'').

[23] S. Rep. 94–589, at 4.

[24] *Id.*

[25] 42 FR 1242 (Jan. 6, 1977); 41 FR 49123 (Nov. 8, 1976); 41 FR 29870 (July 20, 1976).

[26] 12 CFR 1002.2(c)(1)(ii).

[27] 12 CFR 1002.9(b)(2).

[28] 41 FR 29870, 29871 (July 20, 1976) (proposed rule).

[29] 12 CFR 202.3(c) (1976).

[30] 12 CFR 202.2(e) (1978) (emphasis added); *see also* 42 FR 1242, 1252 (Jan. 6, 1977) (final rule).

[31] *See* 12 CFR 1002.2(e).

[32] Public Law 111–203, sec. 1085, 124 Stat. 1376, 2083–84.

[33] *See* 76 FR 79442 (Dec. 21, 2011) (promulgating 12 CFR part 1002 & supplement I).

[34] CFPB Supervision and Examination Manual, at ECOA 7, *https://files.consumerfinance.gov/f/documents/201510_cfpb_ecoa-narrative-and-procedures.pdf* (emphasis added); *see also id.* at ECOA 10 (''[a] creditor must preserve any written or recorded information concerning adverse action on an existing account as well as any written statement submitted by the applicant alleging a violation of the ECOA or Regulation B.'').

[35] *See* 15 U.S.C. 1691a(e).

[36] *See* 12 CFR 202.3(c) (1976) (expressly defining the term ''applicant'' to include ''any person to whom credit is or has been extended'').

[37] *See* Brief of Amici Curiae Consumer Fin. Prot. Bureau, Dep't of Justice, Bd. of Governors of the Fed. Reserve Sys., and Fed. Trade Comm'n in Support of Appellant and Reversal, *Fralish* v. *Bank of Am.,* No. 21–2846 (7th Cir. filed Dec. 16, 2021), *https://files.consumerfinance.gov/f/documents/cfpb_fralish-v-bank-of-america_amicus-brief_2021-12.pdf;* Brief of Amici Curiae Consumer Fin. Prot. Bureau and Fed. Trade Comm'n, *TeWinkle* v. *Capital One, N.A.,* No. 20–2049 (2d Cir. filed Oct. 7, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_amicus-brief_tewinkle-v-capital-one-na_2020-10.pdf.*

[38] Credit cards are one of the most commonly held and widely used financial products in America—over 175 million Americans hold at least one credit card. During the COVID–19 pandemic, credit cards played a vital role as both a source of credit in emergencies and a payment method as more transactions occurred online. According to the CFPB's 2021 Credit Card Report, about 2%, or over 10 million credit card accounts, were closed in 2020 and consumers with low credit scores are two to three times more likely to have their accounts closed than those with a higher credit score. *See* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (Sept. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.* Additionally, the same report shows that over 10 million accounts experienced a credit line decrease in 2020. *See id.; see also 5 Reasons Credit Card Companies Close Accounts Without Notice—And How to Fix Them,* USA TODAY (July 13, 2021), *https://www.usatoday.com/story/money/personalfinance/budget-and-spending/2021/07/13/5-reasons-a-credit-card-company-can-close-your-account-with-no-notice/*

text, history, purpose, and judicial interpretation all point the same way: As used in ECOA, the term ''applicant'' includes persons who applied for and have received credit. Any uncertainty about ECOA's protections for existing borrowers is dispelled by Regulation B.

a. Statutory Text

''It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'' [39] Reading together the relevant provisions of ECOA makes clear that the term ''applicant'' is not limited to those who are in the process of applying for credit. The Supreme Court's analysis in *Robinson* v. *Shell Oil Co.*[40] is instructive. In that case, the Court held that the term ''employees'' in Section 704(a) of Title VII includes those who were former employees when the discrimination occurred. Writing for a unanimous Court, Justice Thomas explained that although ''[a]t first blush, the term 'employees' . . . would seem to refer to those having an existing employment relationship with the employer in question,'' that ''initial impression . . . does not withstand scrutiny in the context of § 704(a).'' [41]

For one thing, the Court observed, there is ''no temporal qualifier in the statute such as would make plain that § 704(a) protects only persons still employed at the time of the retaliation.'' [42] The same reasoning applies to the term ''applicant'' in ECOA, which is not expressly limited to those currently in the process of seeking credit. The Court further noted that ''a number of other provisions in Title VII use the term 'employees' to mean something more inclusive or different than 'current employees.' '' [43] The same reasoning applies to the term ''applicant'' used in ECOA.

Reading ECOA's definition of ''applicant'' alongside the Act's other provisions makes clear that the term includes applicants who have received credit and become existing borrowers. For example, ECOA's core anti-discrimination provision protects ''applicant[s]'' from discrimination ''with respect to *any aspect* of a credit transaction''—not just during the application process itself.[44] The phrase ''any aspect of a credit transaction'' is most naturally read to include both the initial formation of a credit agreement as well as the performance of that agreement.[45] Consistent with this ordinary meaning, Regulation B has always defined the term ''credit transaction'' to encompass ''every aspect of an applicant's dealings with a creditor,'' including elements of the transaction that take place after credit has been extended.[46] The expansive language of this provision shows an intent to sweep broadly, beyond just the initial process of requesting credit, to bar discrimination in all parts of a credit arrangement. Indeed, the main Senate report accompanying ECOA specifically noted that ''[t]he prohibition applies to all credit transactions including . . . revocation of any open-end consumer credit account.'' [47]

Similarly, ECOA's disclosure provision requires that creditors give a statement of reasons to ''[e]ach applicant'' against whom they take ''adverse action.'' [48] ECOA defines ''adverse action'' to include a ''revocation of credit'' as well as a ''change in the terms of an existing credit arrangement.'' [49] These are actions that can be taken only with respect to persons who have already received credit.

ECOA's private right of action points in the same direction. It allows an aggrieved ''applicant'' to bring suit against creditors who fail to comply with ECOA or Regulation B.[50] These references to ''applicant[s]'' cannot be understood to refer only to those with pending credit applications. Otherwise, a person whose application was denied on a prohibited basis would have no recourse under ECOA's private right of action, which Congress intended would be the Act's ''chief enforcement tool.'' [51] Instead, these references further confirm that the term ''applicant'' is not limited to those currently applying for credit.[52]

b. Legislative History

Congress's history of amending the statute strongly supports reading the statute to include existing borrowers. As noted, the Board issued Regulation B in 1975, through notice-and-comment rulemaking, shortly before ECOA took effect. The rule defined ''applicant'' to include ''any person to whom credit is or has been extended.'' [53] If Congress thought this definition an unreasonable departure from the statute it had just passed, it would surely have given some sign of that when it amended and expanded ECOA the following year. Nor is there any doubt that the drafters of those statutory amendments were generally aware of the new Regulation B, as they cited parts of it in explaining their bill.[54]

But the 1976 amendments did not limit the reasonable definition of ''applicant'' that the Board had promulgated just months before. To the contrary, the 1976 amendments added new provisions—such as the ones entitling ''applicants'' to a statement of reasons when their credit is revoked or modified—that make sense only if ''applicant'' is understood to include existing borrowers, as stated in Regulation B. Nor has Congress ever amended the statutory definition of ''applicant'' or otherwise expressed disapproval of the understanding of that term in Regulation B, despite revising the statute multiple times since 1976.[55]

''[W]hen,'' as here, ''Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one

47470647/; 'My Credit Card Just Got Canceled and I Don't Know Why,' THE CUT (Sept. 11, 2020), *https://www.thecut.com/article/can-my-credit-card-company-cancel-my-card.html.*

[39] *Nat'l Ass'n of Home Builders* v. *Defs. of Wildlife,* 551 U.S. 644, 666 (2007) (quotation marks omitted).

[40] 519 U.S. 337 (1997).

[41] *Id.* at 341.

[42] *Id.*

[43] *Id.* at 342.

[44] 15 U.S.C. 1691(a) (emphasis added); *see also Ali* v. *Fed. Bureau of Prisons,* 552 U.S. 214, 218 (2008) (''[T]he word 'any' has an expansive meaning . . . .'') (quoting *United States* v. *Gonzales,* 520 U.S. 1, 5 (1997)).

[45] *See, e.g.,* Black's Law Dictionary 1668 (rev. 4th ed. 1968) (defining ''transaction'' to include the ''[a]ct of transacting or conducting any business'' and defining ''transact'' as ''equivalent to 'carry on,' when used with reference to business'').

[46] 12 CFR 1002.2(m) (defining ''credit transaction'' to include, among other things, the ''revocation, alteration, or termination of credit'' and ''collection procedures''); 12 CFR 202.3(k) (1976) (defining ''credit transaction'' to include the ''furnishing of credit information and collection procedures''). Accordingly, the Bureau interprets aspects of the credit transactions enumerated in Regulation B as including and encompassing the servicing of that credit, debt collection, loss mitigation, payment plans, settlements, co-signer release, and certain other services provided to existing accountholders.

[47] S. Rep. 93–278, 93rd Cong., 1st Sess., at 27 (1973).

[48] 15 U.S.C. 1691(d)(2).

[49] 15 U.S.C. 1691(d)(6).

[50] 15 U.S.C. 1691e(a); *see also id.* 1691e(b) (a ''creditor, other than a government or governmental subdivision or agency,'' shall be liable to the aggrieved ''applicant'' for punitive damages); *id.* 1691e(c) (aggrieved ''applicant'' may seek relief in district court).

[51] S. Rep. 94–589, at 13.

[52] *Cf. Robinson,* 519 U.S. at 343 (similarly concluding that the reference to aggrieved ''employees'' in Title VII's private right of action shows that that term is not limited to current employees).

[53] 12 CFR 202.3(c) (1976).

[54] *See* S. Rep. 94–589, at 2 (citing the Board's rules and noting that the amendments expanded the Board's rulemaking authority).

[55] *See* FDIC Improvement Act of 1991, Public Law 102–242, sec. 223, 105 Stat. 2306–07; Dodd-Frank Act, Public Law 111–203, secs. 1071, 1474, 124 Stat. 2056–57, 2199–2200.

intended by Congress.' '' [56] That maxim applies with particular force here: The first time Congress revisited the statute after the Board defined ''applicant'' to include existing borrowers, Congress enacted new provisions that implicitly approved the Board's interpretation by requiring that creditors provide an explanation for adverse actions that can be taken only with respect to existing borrowers.

c. Statutory Purpose

Reading ''applicant'' to protect individuals and businesses from discrimination both during the process of requesting credit and once credit has been extended furthers ECOA's purpose. It prevents a creditor from canceling an existing account because of a borrower's race. It bars a creditor from unfavorably modifying the terms of an existing account—perhaps by lowering the amount available on a line of credit—because of a borrower's national origin. It stops a creditor from requiring women with existing accounts to reapply for their credit upon getting married.[57] And it ensures that a creditor would be required to provide a statement of reasons to the applicant in any of these situations. This is the most plausible interpretation of ECOA.

Finally, reading ''applicant'' in this way—*i.e.,* ECOA protects applicants from discrimination both during the process of requesting credit and once credit has been extended—precludes obvious paths to evasion. A creditor that wished to deny credit applications on a prohibited basis, or to offer credit on inferior terms for the same prohibited reason, cannot do so by simply extending credit on the terms requested and later revoking or amending the terms of the credit arrangement. Nor can a creditor use similar means to avoid ever having to explain to an applicant the reasons for an adverse action. This interpretation of ECOA, therefore, forecloses a potential loophole that could effectively swallow much of the Act. Such a loophole would be plainly inconsistent with ECOA.

d. Judicial Precedent

Those courts that have properly read the term ''applicant'' in its statutory context, including the only court of appeals to have addressed the issue, have agreed that the statute protects existing borrowers. In *Kinnell* v. *Convenient Loan Co.,*[58] the Tenth Circuit considered a claim that a creditor discriminated in violation of ECOA when it refused to accept a late payment on an existing loan and instead accelerated the remaining balance due. The court rejected the argument that the plaintiff was not an ''applicant'' under ECOA because he was no longer actively seeking credit.[59] ECOA, the court explained, prohibits discrimination ''with respect to any aspect of a credit transaction,'' [60] and was meant ''to protect people from the 'denial *or termination* of credit' '' on a prohibited basis.[61] The lender's reading of ''applicant'' would mean that ''any sua sponte action on the part of the creditor . . . would not be actionable. Such an interpretation improperly narrows the scope of the ECOA.'' [62] The court noted that its reading of ''applicant'' was directly supported by Regulation B.[63]

At least one district court has reached the same conclusion. In *Powell* v. *Pentagon Fed. Credit Union,*[64] the court held that the plaintiff, who alleged that his existing credit plan was terminated on a prohibited basis, was an ''applicant'' under ECOA. The court relied on ECOA's requirement that ''applicants'' receive notice when their credit is revoked and on the longstanding definition in Regulation B.[65] The court observed that the contrary interpretation would be wholly at odds with ECOA's purposes because it ''would preclude a plaintiff with an existing account from bringing a claim for the discriminatory revocation of that account.'' [66] The court found nothing to ''suggest[ ] that Congress' intent to discourage discrimination against applicants somehow ceases when the alleged discrimination is against existing credit customers.'' [67]

The Bureau acknowledges that a few other district court decisions have interpreted ''applicant'' to include only persons actively seeking credit, but the Bureau does not believe this interpretation is persuasive.[68] No court of appeals has endorsed these district courts' narrow reading. These district court decisions read ''applicant'' in isolation instead of reading this statutory term in context, as required by the Supreme Court. For example, these decisions did not attempt to square their interpretation with ECOA's requirement that ''applicants'' receive an explanation when their existing credit is terminated or modified. Nor did they grapple with the clear loophole their interpretation would create or the degree to which it would frustrate the Act's remedial purposes.

e. Regulation B

Regulation B has always defined the term ''applicant'' to include those who applied for and have received credit.[69] Other provisions reflect the same interpretation.[70] Neither the Board nor the Bureau has ever amended the rule to reflect a contrary understanding of the term.

As described above, the best interpretation of ECOA is that the term ''applicant'' includes existing borrowers. It was thus reasonable for the Board and then the Bureau to adopt that interpretation in Regulation B. Adopting the contrary reading would have led to the serious textual inconsistencies described above and run directly contrary to the statute's purposes. Regulation B's definition avoids those difficulties and, in the process, serves to ''carry out'' and ''effectuate'' the purposes of ECOA.[71] And because the contrary interpretation would open a glaring loophole in ECOA, Regulation B's definition is ''necessary or proper . . . to prevent circumvention or evasion'' of the Act.[72]

Notably, Regulation B has expressly included existing borrowers as applicants since the rule was first promulgated through notice-and-comment rulemaking in 1975. Indeed, the interpretation of ''applicant'' discussed here has been confirmed by numerous Federal agencies for decades. For example, nine separate agencies or offices, including the Department of Justice, Federal Trade Commission, and

[56] *CFTC* v. *Schor,* 478 U.S. 833, 846 (1986) (quoting *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 274–75 (1974)).

[57] *Cf.* S. Rep. 93–278, at 17 (citing this very scenario as an example of the discrimination against ''applicants'' that ECOA prohibits).

[58] 77 F.3d 492 (10th Cir. 1996) (unpublished table decision).

[59] *Id.* at *2.

[60] *Id.* (quoting 15 U.S.C. 1691(a)).

[61] *Id.* (emphasis added) (quoting *Miller* v. *American Express Co.,* 688 F.2d 1235, 1239 (9th Cir. 1982)).

[62] *Id.*

[63] *Id.*

[64] No. 10–cv–785, 2010 WL 3732195 (N.D. Ill. Sept. 17, 2010).

[65] *Id.* at *4–5.

[66] *Id.* at *4.

[67] *Id.* at *4 n.2.

[68] *See, e.g., TeWinkle* v. *Capital One, N.A.,* No. 1:19–cv–01002, 2019 WL 8918731, at *4–5 (W.D.N.Y. Dec. 11, 2019); *Kalisz* v. *Bank of America, N.A.,* No. 1:18–cv–00516, 2018 WL 4356768, at *2–3 (E.D. Va. Sept. 11, 2018).

[69] *See* 12 CFR 1002.2(e) (including in the definition ''any person . . . who has received an extension of credit from a creditor''); *see also* 12 CFR 202.3(c) (1976) (including in the definition ''any person to whom credit is or has been extended by [a] creditor'').

[70] *See, e.g.,* 12 CFR 1002.2(m) (defining ''credit transaction'' to mean ''every aspect of *an applicant's* dealings with a creditor regarding an application for credit *or an existing extension of credit*'') (emphasis added).

[71] 15 U.S.C. 1691b(a).

[72] *Id.*

the Board, previously published a statement confirming their view that ECOA prohibits discrimination in the treatment of existing borrowers, such as by ''[t]reat[ing] a borrower differently in servicing a loan or invoking default remedies'' or ''[using] different standards for pooling or packaging a loan in the secondary market.'' [73] The same view is reflected in the manual used by the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and other financial regulators to conduct examinations of financial institutions for compliance with fair lending laws.[74] The Bureau has consistently taken the same view of ''applicant,'' including by reissuing the Board's original definition; issuing guidance that Regulation B ''covers creditor activities before, during, and after the extension of credit''; [75] and taking enforcement action to address violations of ECOA against existing borrowers.[76] In short, the Bureau's interpretation is longstanding and well established.

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau's authority to interpret ECOA and Regulation B, including under section 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.[77]

By operation of ECOA section 706(e), no provision of ECOA imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[78]

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[79] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[80] The Bureau also has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[81]

Pursuant to the Congressional Review Act,[82] the Bureau will submit a report containing this interpretive rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–10453 Filed 5–17–22; 8:45 am]

BILLING CODE 4810–AM–P

POSTAL SERVICE

39 CFR Part 111

Domestic Competitive Products Pricing and Mailing Standards Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to reflect changes to pricing and mailing standards for certain competitive products.

DATES: *Effective:* July 10, 2022.

FOR FURTHER INFORMATION CONTACT: Steven Jarboe at (202) 268–7690, Margaret Pepe (202) 268–3078, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: This final rule describes new price and product features for competitive products, by class of mail, established by the Governors of the United States Postal Service®. New prices are available under Docket Number CP2022–62 on the Postal Regulatory Commission (PRC) website at *https://www.prc.gov,* and on the Postal Explorer® website at *https://pe.usps.com.*

The Postal Service will revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), to reflect changes to certain pricing and mailing standards for the following competitive products:

- Priority Mail®.
- Parcel Select®.
- Return Services.
- Other.

Competitive price and product changes are identified by product as follows:

Priority Mail

Priority Mail Commercial Plus Cubic

Currently, Commercial Plus cubic prices are available to Priority Mail customers whose account volumes exceeded 50,000 pieces in the previous calendar year and have a customer commitment agreement with the Postal Service.

The Postal Service is revising the DMM to remove the volume requirements for Priority Mail Commercial Plus Cubic prices. The Postal Service will also eliminate the requirement to have a customer commitment agreement for cubic pricing. Priority Mail cubic prices will now be available to all commercial customers.

Priority Mail Maximum Insurance Indemnity

The Postal Service is proposing to make the maximum insurance indemnity included with retail and commercial priced Priority Mail limited to a maximum liability of $100.00. See **Federal Register** document, *New Mailing Standards for Domestic Mailing Services Products* (87 FR 21601–21603), for additional information.

Parcel Select

Parcel Select Ground Cubic

The Postal Service is implementing cubic pricing under the Parcel Select Ground price category. Parcel Select Ground cubic pricing will be available to eligible Parcel Select Ground customers for rectangular, nonrectangular, and soft pack mailpieces. Each mailpiece must measure 1 cubic foot or less, weigh 20 pounds or less, and the longest dimension may not exceed 18 inches. Cubic-priced mailpieces may not be rolls or tubes. Parcel Select Ground

[73] Policy Statement on Discrimination in Lending, 59 FR 18266, 18268 (Apr. 15, 1994).

[74] *See* Interagency Fair Lending Examination Procedures, at ii (Aug. 2009), *available at https://go.usa.gov/xeY37.*

[75] Bureau of Consumer Fin. Prot., Equal Credit Opportunity Act Examination Procedures, at 1 (Oct. 2015), *available at https://go.usa.gov/xekcN.*

[76] *See, e.g., In re American Express Centurion Bank and American Express Bank, FSB,* No. 2017–CFPB–0016, 2017 WL 7520638 (Aug. 23, 2017) (consent order resolving claims that creditors discriminated against existing borrowers on the basis of race and national origin by, for example, subjecting certain borrowers to more aggressive collection practices).

[77] 12 U.S.C. 5512(b)(1). The relevant provisions of ECOA and Regulation B form part of Federal consumer financial law. 12 U.S.C. 5481(12)(D), (14).

[78] 15 U.S.C. 1691e(e).

[79] 5 U.S.C. 553(b).

[80] 5 U.S.C. 603(a), 604(a).

[81] 44 U.S.C. 3501–3521.

[82] 5 U.S.C. 801 *et seq.*

cubic pricing will be available in ten pricing tiers.

Return Services

USPS Returns Service

The Postal Service is proposing to include $100.00 of insurance with Priority Mail Return service pieces. See **Federal Register** document, *New Mailing Standards for Domestic Mailing Services Products* (87 FR 21601–21603), for additional information.

Other

Postal Zone Calculation Revision

Currently, prices for certain subclasses of mail are based on the weight of the individual piece and the distance that the piece travels from origin to destination (*i.e.,* the number of postal zones crossed). For the administration of these postal zones, the earth is divided into units of area 30 minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. Postal zones are based on the distance between these units of area. The distance is measured from the center of the unit of area containing the SCF serving the origin Post Office to the SCF serving the destination Post Office.

The Postal Service is revising the calculation method for postal zones. The administration of postal zones will be calculated based on the centroid of each 3-digit ZIP Code area or combination of 3-digit ZIP Code areas. Postal zones will now be based on the distance between these units of area. The distance is measured from the centroid of the 3-digit ZIP Code area serving the origin Post Office to the centroid of the 3-digit ZIP Code area serving the destination Post Office. The 3-digit ZIP Code areas serving the origin and destination Post Offices will be determined by using Labeling List L002, Column A.

* * * * *

Resources

The Postal Service provides additional resources to assist customers with this price change for competitive products. These tools include price lists, downloadable price files, and **Federal Register** Notices, which may be found on the Postal Explorer® website at *https://pe.usps.com.*

The Postal Service adopts the following changes to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Flats, and Parcels

201 Physical Standards

* * * * *

7.0 Physical Standards for Parcels

* * * * *

7.3 Maximum Weight and Size

[Revise the first sentence of 7.3 to read as follows:]

No mailpiece may weigh more than 70 pounds. Lower weight limits apply to parcels mailed at cubic, Regional Rate Box, First-Class Package Service — Commercial, USPS Marketing Mail, Parcel Select Ground Cubic, and Bound Printed Matter prices. * * *

* * * * *

7.8 Measuring Parcels Prepared in Soft Packaging

[Revise the introductory text of 7.8 to read as follows:]

Except for Priority Mail Commercial Plus Cubic Soft Pack under 223.1.4 and Parcel Select Ground Cubic Soft Pack under 253., parcels prepared in soft packaging (poly, plastic, cloth, padded envelopes, or similar soft packaging) are measured to determine the dimensions (length, width, height) as follows:

* * * * *

8.0 Additional Physical Standards by Class of Mail

* * * * *

8.2 Priority Mail

[Revise the text of 8.2 to read as follows:]

The maximum weight is 70 pounds. Lower weight limits apply to parcels mailed at cubic (20 pounds); Regional Rate ''Box A'' (15 pounds); and Regional Rate ''Box B'' (20 pounds) prices. The combined length and girth of a piece (the length of its longest side plus the distance around its thickest part) may not exceed 108 inches. Lower size limits apply to parcels mailed at Flat Rate, Regional Rate, and cubic prices. Lower weight and size standards apply for some APO/FPO and DPO mail subject to 703.2.0, and 703.4.0, and for Department of State mail subject to 703.3.0.

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

[Revise the heading of 3.4 to read as follows:]

3.4 Priority Mail Cubic Markings

3.4.1 Price Marking—Postage Evidencing Systems

[Revise the first sentence of the introductory text of 3.4.1 to read as follows:]

Priority Mail pieces claiming the cubic price must be marked ''Priority Mail'' and bear the applicable marking that reflects the correct price tier printed on the piece or produced as part of the postage indicia. * * *

* * * * *

[Renumber 3.8 and 3.9 as 3.9 and 3.10. Add new 3.8 to read as follows:]

3.8 Parcel Select Ground Cubic Markings

3.8.1 Price Marking—Postage Evidencing Systems

Parcel Select Ground pieces claiming the cubic price must be marked ''Parcel Select Ground'' and bear the applicable marking that reflects the correct price tier printed on the piece or produced as part of the postage indicia. The cubic tiers are determined by the cubic measurement of each mailpiece up to the defined threshold, (for example, measurements from .01 up to .10 for ''Cubic .10'' and from .101 up to .20 for ''Cubic .20''). Place the marking directly above, directly below, or to the left of the postage. Approved markings are as follows:

a. ''Cubic .10''
b. ''Cubic .20''
c. ''Cubic .30''
d. ''Cubic .40''
e. ''Cubic .50''

f. ''Cubic .60''
g. ''Cubic .70''
h. ''Cubic .80''
i. ''Cubic .90''
j. ''Cubic 1.00''

3.8.2 Price Marking—Permit Imprint

Parcel Select Ground permit imprint pieces claiming the cubic price must be marked ''Parcel Select Ground'' and bear the ''cubic'' marking printed on the piece or produced as part of the permit imprint indicia. Place the marking directly above, directly below, or to the left of the postage. The approved marking is ''Cubic'' (or ''CUBIC,'' or ''cubic'').

3.8.3 Soft Pack and Padded Envelope Markings

Regardless of the postage payment method used, soft pack and padded envelopes must be marked ''Parcel Select Ground'' in addition to the tier price markings in 3.8.1 and the dimensions (length and width) of the original packaging. Place the markings directly above, directly below, or to the left of the postage.

* * * * *

220 Commercial Mail Priority Mail

223 Prices and Eligibility

1.0 Prices and Fees

1.1 Price Application

The following price applications apply:

[Revise the first sentence of item a to read as follows:]

a. Except Commercial Plus items weighing up to 0.5 pound (see 1.1c) and cubic items (see 1.1d), Priority Mail mailpieces are charged per pound; any fraction of a pound is rounded up to the next whole pound. * * *

* * * * *

[Revise the text of item d to read as follows:]

d. Cubic prices are not based on weight, but are charged by zone and cubic measurement of the mailpiece with any fraction of a measurement rounded down to the nearest ¼ inch. For example, if a dimension of a piece measures 12⅜ inches, it is rounded down to 12¼ inches.

* * * * *

[Revise the heading of 1.4 and 1.4.1 to read as follows:]

1.4 Cubic

1.4.1 Cubic Eligibility

[Revise the text of 1.4.1 to read as follows:]

Cubic prices are generally available to commercial Priority Mail customers. Each mailpiece must measure .50 cubic foot or less, weigh 20 pounds or less, and the longest dimension may not exceed 18 inches. Cubic-priced mailpieces may not be rolls or tubes.

* * * * *

[Revise the heading of 1.4.2 to read as follows:]

1.4.2 Cubic Tiers

* * * * *

[Revise the heading of Exhibit 1.4.4 to read as follows:]

Exhibit 1.4.4 Cubic Pricing Tiers for Soft Pack & Padded Envelopes

* * * * *

[Delete the text of 1.4.5 in its entirety.]

* * * * *

3.0 Basic Eligibility Standards for Priority Mail

3.1 Description of Service

[Revise the second sentence of 3.1 to read as follows:]

* * * Lower weight limits apply to cubic pieces (see 1.4); Regional Rate Boxes (see 1.8); APO/FPO mail subject to 703.2.0 and 703.4.0 and Department of State mail subject to 703.3.0.

* * * * *

224 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

* * * * *

[Delete the text of 1.1.3 in its entirety.]

* * * * *

225 Mail Preparation

* * * * *

[Revise the heading and text of 4.0 to read as follows:]

4.0 Preparing a Cubic Mailing

Cubic mailpieces for multiple price tiers may be combined in the same container.

* * * * *

250 Commercial Mail Parcel Select

253 Prices and Eligibility

1.0 Prices and Fees

[Revise the heading and text of 1.1 to read as follows:]

1.1 Pricing

1.1.1 Prices

For prices, see Notice 123—Price List.

1.1.2 Price Categories

The price categories for Parcel Select are as follows:

a. Destination Entry, including destination entry network distribution center (DNDC), destination entry sectional center facility (DSCF), and destination entry delivery unit (DDU).

b. Ground, including Ground Cubic.

c. Lightweight.

d. USPS Connect Local.

1.1.3 Price Application

The following price applications apply:

a. Prices for Destination Entry DNDC and Ground are based on the weight increment of each addressed piece, and on the zone to which the piece is addressed. The price is charged per pound or fraction thereof; any fraction of a pound is considered a whole pound. The minimum price per piece is the 1-pound price.

b. Prices for Destination Entry DDU and DSCF, and USPS Connect Local are based on the weight increment of each addressed piece. The price is charged per pound or fraction thereof; any fraction of a pound is considered a whole pound. The minimum price per piece is the 1-pound price.

c. Prices for USPS Connect Local Flat Rate packaging are based on a flat rate regardless of domestic destination and the actual weight (up to 25 pounds) of the mailpiece.

d. Prices for Ground Cubic are based on the zone and cubic measurement of the mailpiece with any fraction of a measurement rounded down to the nearest ¼ inch. For example, if a dimension of a Ground cubic piece measures 12⅜ inches, it is rounded down to 12¼ inches.

e. Prices for Parcel Select Lightweight are based on the weight increment and entry of each addressed piece. The price is charged per ounce or fraction thereof, with any fraction of an ounce being rounded to the next whole ounce. The minimum price per piece is the 1-ounce price.

* * * * *

[Delete 1.2, Parcel Select Prices, and add new 1.2 to read as follows:]

1.2 Parcel Select Ground Cubic

1.2.1 Eligibility

Cubic prices are available to eligible Parcel Select Ground customers including Ground Return Service under 505.3.0. Each mailpiece must measure 1 cubic foot or less, weigh 20 pounds or less, and the longest dimension may not exceed 18 inches. Cubic-priced mailpieces may not be rolls or tubes.

1.2.2 Tiers

Cubic prices consist of the following ten tiers:

a. Tier 0.10—mailpieces measuring up to .10 cubic foot

b. Tier 0.20—mailpieces measuring more than .10 up to .20 cubic foot

c. Tier 0.30—mailpieces measuring more than .20 up to .30 cubic foot
d. Tier 0.40—mailpieces measuring more than .30 up to .40 cubic foot
e. Tier 0.50—mailpieces measuring more than .40 up to .50 cubic foot
f. Tier 0.60—mailpieces measuring more than .50 up to .60 cubic foot
g. Tier 0.70—mailpieces measuring more than .60 up to .70 cubic foot
h. Tier 0.80—mailpieces measuring more than .70 up to .80 cubic foot
i. Tier 0.90—mailpieces measuring more than .80 up to .90 cubic foot
j. Tier 1.00—mailpieces measuring more than .90 up to 1.00 cubic foot

1.2.3 Determining Cubic Tier Measurements for Rectangular and Nonrectangular Parcels

Follow these steps to determine the cubic tier measurement for rectangular and nonrectangular parcels:

a. Measure the length, width, and height at each dimension's maximum point, in inches. Round down (see 604.7.0) each measurement to the nearest ¼ inch. For example, 6⅛″ × 5⅞″ × 6⅜″ is rounded down to 6″ x 5¾″ x 6¼″.

b. Multiply the length by the width by the height and divide by 1728. For example: 6″ × 5¾″ × 6¼″ = 215.6 divided by 1728 = 0.125 (This piece exceeds 0.10—Tier 1 threshold). It is calculated at Tier 2—0.101 to 0.20.

1.2.4 Determining Cubic Tier Measurement for Soft Pack and Padded Envelopes

Cubic tier measurements for soft pack (poly, plastic, cloth, or similar soft packaging) and padded envelopes are based on the outside dimensions of length plus width, in inches, of the original packaging material. Mailpieces that are pleated (*e.g.,* expandable) must follow the measurement guidelines in 1.4.3 to be eligible for cubic pricing. Determine cubic tier measurements as follows:

a. Measure the length and width separately in inches.

b. Round down (see 604.7.0) each measurement to the nearest ¼ inch. For example, 10⅛ inches is rounded down to 10 inches.

c. Add the two measurements together. The maximum total of length plus width cannot exceed 36 inches. See Exhibit 1.2.4 for corresponding price tiers.

Exhibit 1.2.4 Cubic Pricing Tiers for Soft Pack & Padded Envelopes

Cubic price tiers	Length plus width
0.10	Mailpieces measuring from 0″ up to 16″.
0.20	Mailpieces measuring more than 16″ up to 21″.
0.30	Mailpieces measuring more than 21″ up to 24″.
0.40	Mailpieces measuring more than 24″ up to 26″.
0.50	Mailpieces measuring more than 26″ up to 28″.
0.60	Mailpieces measuring more than 28″ up to 30″.
0.70	Mailpieces measuring more than 30″ up to 32″.
0.80	Mailpieces measuring more than 32″ up to 34″.
0.90	Mailpieces measuring more than 34″ up to 35″.
1.00	Mailpieces measuring more than 35″ up to 36″.

* * * * *

4.0 Price Eligibility for Parcel Select and Parcel Select Lightweight

* * * * *

4.2 Parcel Select Ground Price Eligibility

[Revise the introductory text of 4.2 to read as follows:]

To qualify for Parcel Select Ground prices including Parcel Select Ground cubic, mailings must meet one of the following volume thresholds:

* * * * *

254 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

1.1.1 Parcel Select Destination Entry and Ground

[Revise the introductory text of 1.1.1 to read as follows:]

Parcel Select destination entry and ground postage (including cubic) may be paid as follows:

* * * * *

255 Mail Preparation

* * * * *

[Add new section 8.0 to read as follows:]

8.0 Preparing a Cubic Mailing

Cubic mailpieces for multiple price tiers may be combined in the same container.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

608 Postal Information and Resources

* * * * *

9.0 Postal Zones

9.1 Basis

[Revise the text of 9.1 to read as follows:]

Postal prices for certain subclasses of mail are based on the weight of the individual piece and the distance that the piece travels from origin to destination (*i.e.,* the number of postal zones crossed). For the administration of these postal zones, the centroid of each 3 digit ZIP Code area or combination of 3 digit ZIP Code areas are calculated. Postal zones are based on the distance between these units of area. The distance is measured from the centroid of the 3-digit ZIP Code area serving the origin Post Office to the centroid of the 3-digit ZIP Code area serving the destination Post Office. The 3-digit ZIP Code areas serving the origin and destination Post Offices are determined by using Labeling List L002, Column A.

9.2 Application

[Revise the introductory text of 9.2 to read as follows:]

Zones are used to compute postage on zoned mail sent between 3-digit ZIP Codes areas, including military Post Offices (MPOs), as follows:

[Revise the text and footnote of item a to read as follows:]

a. For the purposes of computing postal zone information, except for items 9.2b and 9.2c, the following table applies to MPOs listed in L002, Column A.

3–Digit zip code prefix group	SCF serving the destination office
090–099 *	New York NY 100.
340	Miami FL 331.

3–Digit zip code prefix group	SCF serving the destination office
962–966 *	San Francisco CA 940.

* Priority Mail and First-Class Package Service destinating to these ZIP Codes is served by Chicago IL 606.

* * * * *

[Revise the text of item c by deleting the last three sentences.]

* * * * *

9.4.2 Nonlocal Zone

Nonlocal zones are defined as follows:

[Revise the text of item a to read as follows:]

a. The zone 1 price applies to pieces not eligible for the local zone in 9.4.1 that are mailed between two Post Offices with the same 3-digit ZIP Code prefix identified in L002, Column A. Zone 1 includes all units of area outside the local zone lying in whole or in part within a radius of about 50 miles from the center of the area.

* * * * *

Index

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P

* * * * *

Parcel Select

[Revise the Parcel Select entry by adding ''cubic 253.2.1'' alphabetically.]

* * * * *

Notice 123 (Price List)

[Revise Notice 123 (Price List) as applicable.]

* * * * *

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–10245 Filed 5–17–22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 62, and 70

[EPA–R08–OAR–2021–0732; FRL–9829–02–R8]

Approval of Clean Air Act Operating Permit Program Revisions; Negative Declaration of Existing Hospital/Medical/Infectious Waste Incinerators and Administrative Updates; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA or the ''Agency'') is promulgating approval of revisions to the South Dakota operating permit program for stationary sources under Clean Air Act (CAA) title V (the ''title V program''), a Clean Air Act (CAA) section 111(d)/129 negative declaration for incinerators subject to the Hospital/Medical/Infectious Waste Incinerators (HMIWI) Emissions Guidelines, and making administrative updates. EPA is taking this final action in accordance with the CAA.

DATES: This direct final rule is effective on July 18, 2022 without further notice, unless EPA receives adverse written comments on or before June 17, 2022. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2021–0732. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Carson Coate, Air and Radiation Division, EPA, Region 8, Mail code 8ARD, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (406) 457–5042, email address: *coate.carson@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

I. Why is EPA using a direct final rule?

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, elsewhere in this issue of the **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve South Dakota's title V program revisions, the negative declaration for 40 CFR part 60, subpart Ce, and the administrative updates to 40 CFR 60.4 and 61.04, if relevant adverse comments are filed.

If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Background

Title V of the CAA as amended (42 U.S.C. 7401 *et seq.*) directs states to develop and submit to EPA programs for issuing operating permits to all major stationary sources and to certain other sources.[1] As required under title V, EPA promulgated regulations establishing the minimum elements of an approvable state title V program and defined the corresponding procedures by which the EPA will approve, oversee and, when necessary, withdraw approval of a state title V program.[2] South Dakota received final, full approval of its title V program effective on February 28, 1996.[3]

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emissions guidelines for such existing sources.[4] CAA section 129 directs EPA to establish standards of performance for new sources (NSPS) and emissions guidelines for existing sources for each category of solid waste incineration unit.[5] Under CAA section 129, NSPS and emissions guidelines must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.[6] While NSPS are directly applicable to affected facilities, emissions guidelines for existing units are intended for states to use to develop a state plan to submit to EPA.[7] When an affected facility is located in a state, the state must then develop and submit a plan for the

[1] 42 U.S.C. 7661a.
[2] 40 CFR part 70.
[3] 61 FR 2720 (Jan. 29, 1996).
[4] 42 U.S.C. 7411(d), 7429(b)(2).
[5] 42 U.S.C. 7429(a).
[6] Id. 7429(a)(4).
[7] Id. 7429(b)(2).

control of the designated pollutant.[8] Once approved by EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to EPA, EPA is responsible for developing, implementing, and enforcing a federal plan.[9]

The regulations at 40 CFR part 60, subpart B (Subpart B), contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which EPA will approve or disapprove such plans submitted by a state. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.,* a negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of Subpart B that require the submittal of a CAA section 111(d)/129 plan.[10]

EPA promulgated the HMIWI NSPS and emissions guidelines in 1997 and 2009. The emissions guidelines are codified at 40 CFR part 60, subpart Ce. Thus, states were required to submit plans for incinerators subject to the HMIWI emissions guidelines pursuant to sections 111(d) and 129 of the Act and Subpart B or negative declarations pursuant to 40 CFR 60.23(b) and 62.06.[11]

III. State Submittal

On January 3, 2020, in accordance with 40 CFR 70.4(i), South Dakota submitted a request for approval of title V program revisions to incorporate updated federal regulations through July 1, 2018, thereby aligning state rules in South Dakota's Administrative Rules of South Dakota (ARSD) with federal rules at 40 CFR part 70.[12] Specifically, South Dakota requested this change to Chapter 74:36:05—Operating Permits for Part 70 Sources (sections 74:36:05:04(2) and (3), and 74:36:05:16.01(4), (8), (9), (17) and (18)) and Chapter 74:36:13—Continuous Emission Monitoring Systems (section 74:36:13:08).[13] South Dakota's submittal included clean and redlined copies of the revised ARSD, which are available in the docket for this action. The submittal also included evidence that public notice of the State's proposed submittal ran in eleven South Dakota newspapers, that impacted sources and other interested parties were notified, and a public hearing was held on October 17, 2019.[14] The State received no adverse public comments on the requested changes to 74:36:05 and 74:36:13.

On June 7, 2021, South Dakota submitted a negative declaration for the HMIWI emissions guidelines in accordance with CAA sections 111(d) and 129 and 40 CFR 60.23(b) and 62.06. The negative declaration certified that no incinerators subject to the HMIWI emissions guidelines and the requirements of sections 111(d) and 129 of the CAA exist in South Dakota. Specifically, South Dakota had one facility, located at the University of South Dakota, that was considered a co-fired combustor under the HMIWI NSPS. The University of South Dakota disconnected the natural gas supply line to the incinerator in 2012 and requested that the incinerator be removed from its title V air quality operating permit in 2019.[15] Therefore, South Dakota determined that there were no longer any sources subject to the HMIWI emissions guidelines.[16]

On April 16, 2021, South Dakota's Office of Attorney General submitted a letter notifying EPA of the establishment of the South Dakota Department of Agriculture and Natural Resources (DANR). The letter stated that on January 19, 2021, South Dakota Governor, Kristi Noem, executed Executive Order 2021–03, which provided for the merger of the South Dakota Department of Agriculture (DOA) and the South Dakota Department of Environment and Natural Resources (DENR) into one department—the DANR. According to the South Dakota Constitution, executive reorganization orders become effective ''within ninety days after submission'' of the executive order to the South Dakota Legislature (Legislature) unless one of the two houses of the Legislature disapproves of the executive reorganization (S.D. Constitution, Article IV, Section 8).[17] During the 2021 session, neither house of the Legislature passed a resolution of disapproval of Governor Noem's Executive Order 2021–03 and the Order became effective April 19, 2021.[18]

In the April 16, 2021 letter, Assistant Attorney General Steven R. Blair stated that all State programs previously authorized to carry out EPA programs would continue to function in the same manner and all current environmental protection activities conducted under existing EPA approved or delegated programs under the DOA and/or the DENR would continue intact under the newly established DANR. Further, Mr. Blair stated that the merger caused no substantive budgetary or personnel changes, that the new DANR has all the authorities, powers, and duties of the previous DOA and DENR, and that the laws in effect at the time EPA approved or delegated authority to DOA and/or DENR continue to be fully effective and enforceable. Mr. Blair explained that the merger did not require any substantive changes to state law or administrative rules; the statutes and rules were merely updated to reflect the name of the new department.[19]

In a January 20, 2022 letter, the Secretary of the DANR, Hunter Roberts (the Governor's designee), submitted a request that EPA recognize the merger of South Dakota's DOA with the DENR to form the new DANR and incorporate corresponding revisions to the ARSD related to South Dakota's state implementation plan (SIP). Secretary Roberts stated that the ARSD provisions were automatically updated with the DANR's new name during the merger process. Additionally, Secretary Roberts stated that South Dakota's Board of Minerals and Environment approved the DANR's request to ask EPA to recognize the department's new name in South Dakota's SIP during a public hearing on December 16, 2021. Secretary Roberts further confirmed that the merger did not cause a substantive change to state law or administrative rules and that DANR maintains the same authorities, powers, and duties covered and

[8] Id. See also id. 7411(d)(1).

[9] Id.

[10] 40 CFR 60.23(b).

[11] 40 CFR 60.39e.

[12] See South Dakota 111d Package to EPA, p. 100, 120, 123–124, January 3, 2020 (public notice explaining purpose of the regulations and Proposed Amendments explaining requested changes).

[13] Letter from Hunter Roberts, Secretary, South Dakota Department of Environment and Natural Resources, to Gregory Sopkin, Regional Administrator, EPA Region 8, January 3, 2020. This letter contained multiple requests. In this action we are addressing only the request to revise South Dakota's title V operating permit program. See id. at p. 5–6.

[14] South Dakota 111d Package to EPA, p. 793–797.

[15] Letter from Brian Limoges, Assistant Vice President of Facilities Management, University of South Dakota, to Kyrik Rombough, South Dakota Department of Environment and Natural Resources, Re: Incinerator Permit 28.2201–19, July 13, 2019.

[16] Letter from Kyrik Rombough, South Dakota Department of Agriculture and Natural Resources, to Carl Daly, Acting Director of Air & Radiation Division, EPA Region 8, June 7, 2021.

[17] SD DANR Merger SIP Submittal, January 21, 2022, p. 27–28, Letter from Steven R. Blair, Assistant Attorney General, South Dakota Office of Attorney General, to Deb Thomas, Acting Regional Administrator, EPA Region 8, Re: Establishment of South Dakota Department of Agriculture and Natural Resources, April 16, 2021.

[18] SD DANR Merger SIP Submittal, p. 1, Letter from Hunter Roberts, Secretary, South Dakota Department of Agriculture and Natural Resources, to KC Becker, Regional Administrator, EPA Region 8, January 20, 2022.

[19] SD DANR Merger SIP Submittal, p. 27–28.

implemented under the previous department name.[20]

IV. Final Action

South Dakota submitted the necessary information for EPA to review the title V program revisions, the 111(d) negative declaration, and the non-substantive revisions to South Dakota's ARSD to reflect the merger of South Dakota's DOA with the DENR to form the new DANR. EPA is now acting to fully approve South Dakota's January 3, 2020 and January 20, 2022 title V program revisions under 40 CFR 70.4(i). Specifically, we are approving changes to ARSD 74:36:05:04(2) and (3), 74:36:05:16.01(4), (8), (9), (17) and (18), and 74:36:13:08 so that they align with federal regulations promulgated through July 1, 2018.

In addition, we are approving the department name change to the DANR in South Dakota's title V program fees rule at ARSD 74:37:01:08. In its SIP submittal dated January 20, 2022, South Dakota inadvertently included this non-SIP provision. In a March 4, 2022 email, Kyrik Rombough, South Dakota's State Air Director, confirmed that ARSD 74:37:01:08 contains the fee provision for the State's title V operating permit program and should be included in the update to the title V program.[21] Thus, EPA is taking action to approve the change to ARSD 74:37:08 in this direct final rule. We are also updating 40 CFR part 70, appendix A to reference the January 3, 2020, and January 20, 2022 requested revisions. We are also making an administrative update to 40 CFR part 70, appendix A to delete reference to the expiration of an outdated interim approval and instead include reference to our full approval of South Dakota's title V program in 1996.

EPA is also approving South Dakota's June 7, 2021 negative declaration certifying that no incinerators subject to the HMIWI emissions guidelines and the requirements of sections 111(d) and 129 of the CAA exist in South Dakota per CAA sections 111(d) and 129 and 40 CFR 60.23(b) and 62.06. We are also updating 40 CFR part 62, subpart QQ, and 40 CFR part 62, subpart A. The negative declaration fulfills South Dakota's obligations under CAA sections 111(d) and 129. The submittal of this negative declaration exempts South Dakota from the requirement to submit a state plan for incinerators subject to the HMIWI emissions guidelines under 40 CFR part 60, subpart Ce.

EPA is also changing ''Department of Environment and Natural Resources'' to ''Department of Agriculture and Natural Resources'' in 40 CFR 60.4(b)(43) and changing ''Department of Water and Natural Resources'' to ''Department of Agriculture and Natural Resources'' in 61.04(b)(43). These are non-substantive, administrative changes that reflect DANR's new name.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a state title V program submittal that complies with the provisions of the Act and applicable federal regulations; 40 CFR 70.4(i). Thus, in reviewing title V program submittals, EPA's role is to approve state choices, provided they meet the criteria of the CAA and the criteria, standards and procedures defined in 40 CFR part 70. The Administrator is also required by the CAA to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Ce; and 40 CFR part 62, subpart A. Accordingly, this action merely approves state law as meeting Federal 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
- 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 action is not approved to apply in Indian country, as defined at 18 U.S.C. 1151, or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. As such, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure,

[20] SD DANR Merger SIP Submittal, p.1, Letter from Hunter Roberts, Secretary, South Dakota Department of Agriculture and Natural Resources, to KC Becker, Regional Administrator, EPA Region 8, January 20, 2022.

[21] See Email dated March 4, 2022, from Kyrik Rombough, Engineer Manager III, South Dakota Department of Agriculture and Natural Resources, to Monica Morales, Acting Deputy Director, EPA Region 8 Air and Radiation Division.

Air pollution control, Aluminum, Beverages, Carbon monoxide, Chemicals, Coal, Electric power plants, Fluoride, Gasoline, Glass and glass products, Grains, Greenhouse gases, Hazardous substances, Household appliances, Industrial facilities, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metals, Motor vehicle pollution, Natural gas, Nitrogen dioxide, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Rubber and rubber products, Sewage disposal, Steel, Sulfur oxides, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Intergovernmental relations, Mercury, Radioactive materials, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Industrial facilities, Intergovernmental relations, Methane, Ozone, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Waste treatment and disposal.

40 CFR Part 70

Environmental protection, Air pollution control, Intergovernmental relations, Title V.

Dated: May 8, 2022.

KC Becker,

Regional Administrator, Region 8.

40 CFR parts 60, 61, 62 and 70 are amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.* 42 U.S.C. 7401–7601.

Subpart A—General Provisions

■ 2. In § 60.4, revise paragraph (b)(43) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(43) State of South Dakota, Air Quality Program, Department of Agriculture and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, SD 57501–3181.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 3. The authority citation for part 61 continues to read as follows:

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

Subpart A–General Provisions

■ 4. In § 61.04, revise paragraph (b)(43) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(43) State of South Dakota, Department of Agriculture and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, SD 57501–3181.

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 5. The authority citation for part 62 continues to read as follows:

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

Subpart QQ—South Dakota

■ 6. Revise § 62.10360 to read as follows:

§ 62.10360 Identification of plan.

The State of South Dakota submitted a letter on June 7, 2021, certifying that there are no designated facilities subject to the emissions guidelines for existing hospital medical infectious waste incinerators under 40 CFR part 60, subpart Ce, operating within the State's jurisdiction.

§§ 62.10361 and 62.10362 [Removed]

■ 7. Remove §§ 62.10361 and 62.10362.

PART 70—STATE OPERATING PERMIT PROGRAMS

The authority citation for part 70 continues to read as follows:

■ 8. The authority citation for part 70 continues to read as follows:

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

■ 9. In appendix A to part 70 the entry ''South Dakota'' is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

South Dakota

(a) South Dakota Department of Agriculture and Natural Resources: Submitted on November 12, 1993; full approval effective on February 28, 1996.

* * * * *

(d) The State of South Dakota submitted operating permit program revisions on January 3, 2020 and January 22, 2022. On January 3, 2020, South Dakota submitted for program approval revisions to the Administrative Rules of South Dakota, Chapters 74:36:05:04(2), 74:36:05:04(3), 74:36:05:16.01(4), 74:36:05:16.01(8), 74:36:05:16.01(9), 74:36:05:16.01(17), 74:36:05:16.01(18), and 74:36:13:08. The state effective date of these revisions is November 25, 2019. On January 22, 2022, South Dakota submitted for program approval revisions to Administrative Rules of South Dakota, Chapter 74:37:01:08. The state effective date is April 19, 2021. The revisions are effective on July 18, 2022.

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[FR Doc. 2022–10224 Filed 5–17–22; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 16–271; DA 22–484; FR ID 86215]

Wireless Telecommunications Bureau Adopts Drive Test Parameters and Model for Alaska Plan Participants

AGENCY: Federal Communications Commission.

ACTION: Final order; Alaska Plan.

SUMMARY: In the document, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) adopts the drive test parameters and a drive test model required of two Alaska Plan mobile-provider participants: GCI Communication Corp (GCI) and Copper Valley Wireless (CVW). The Bureau also requests comment on requiring these mobile providers to submit new drive-test data if they fail to demonstrate compliance with their approved performance plan.

DATES: The Order is adopted and effective on June 17, 2022.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Matthew Warner of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, *Matthew.Warner@fcc.gov,* (202) 418–2419.

SUPPLEMENTARY INFORMATION: This is a summary of the ''Order'' portion of the Bureau's Alaska Plan Drive Test Order and Request for Comment, adopted on May 5, 2022, and released on May 5. 2022. The ''Request for Comments'' portion is published elsewhere in this issue of the **Federal Register**. The full text of this document is available for public inspection on the Commission's website at: *https://www.fcc.gov/document/alaska-drive-test-order-and-request-comment.*

I. Introduction

1. In the Order portion of this document, the Wireless Telecommunications Bureau (Bureau) adopts a drive-test model and parameters for the drive tests that are required of certain mobile providers participating in the Alaska Plan. The Bureau will use these drive-test data to determine whether mobile providers that receive more than $5 million in annual support for the deployment of mobile voice and broadband service in remote areas of Alaska have met their performance commitments. In the Request for Comment portion of the document, we seek comment on a proposal to require mobile-provider participants subject to the drive-test requirement to submit new drive-test data consistent with the drive-test model and parameters if they fail to meet a buildout milestone and later seek to cure a compliance gap.

II. Background

2. Unique circumstances in Alaska make deploying communications infrastructure particularly challenging in that state. In the 2016 Alaska Plan Order, the Commission adopted an Alaska-specific, 10-year universal service plan to address these unique circumstances. The Alaska Plan Order froze mobile-wireless service-provider participants' preexisting support at December 2014 levels (frozen support) and sought to have those providers commit to expand Fourth-Generation, Long-Term Evolution (4G LTE) service at speeds of at least 10/1 Mbps in eligible areas, subject to certain exceptions (such as where middle-mile infrastructure capability is limited). In areas with limited middle-mile infrastructure, providers were allowed to make a lesser commitment until better middle-mile infrastructure became available.

3. Provider Commitments. Eight mobile providers chose to participate in the Alaska Plan and submitted for Bureau approval performance plans in which they committed to provide mobile voice and broadband services to delineated populations in remote eligible areas of Alaska. Providers, as part of their performance plans, were required to identify both the last-mile mobile technology (*e.g.,* 3G, 4G LTE) that they would use to serve delineated populations and the type of middle-mile connectivity (*e.g.,* fiber, satellite) on which they would rely to provide mobile services. Where Alaska Plan participants could provide fiber-based 4G LTE, their speed commitments in those areas were greater than or equal to speed commitments with other technology combinations, consistent with the deployment standard set forth in the Alaska Plan Order (4G LTE at speeds of at least 10/1 Mbps). For those areas where the provider had to provide service over a performance-limiting satellite backhaul connection, the Bureau permitted providers to commit to previous-generation last-mile technologies and slower speeds.

4. Each participating mobile provider committed to meet buildout requirements at the end of year five (ending December 31, 2021) and year 10 (ending December 31, 2026) of the Alaska Plan and to certify that it met the obligations contained in the performance plan at each of these buildout milestones. The Commission stated that it would rely on participating providers' FCC Form 477 data—which report inter alia mobile wireless broadband coverage by technology and minimum advertised or expected speed—in determining whether the providers' five-year and 10-year milestones have been met. The Commission delegated authority to the Bureau to require additional information necessary to establish clear standards for determining whether providers have met their five and 10-year commitments.

5. Drive Tests. Mobile participants that receive more than $5 million annually in Alaska Plan support must accompany their milestone certifications with drive-test data. The drive-test data must show mobile transmissions to and from the network that meet or exceed the minimum speeds set out in the approved performance plans in the areas where support was received. The Alaska Plan Order specifies that these participants ''may demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered.'' Given the unique terrain and lack of road networks in remote Alaska, providers may conduct drive tests by means other than automobiles (such as snow-mobiles or other vehicles appropriate to local conditions). Two of the eight mobile participants—GCI Communications Corp. (GCI) and Copper Valley Wireless (CVW)—exceed the $5 million annual support threshold, and accordingly, they must provide drive-test data supporting the speed certifications consistent with their performance plan commitments.

6. Alaska Drive-Test Parameters and Model. In the Alaska Drive Test Public Notice, the Bureau proposed a model for conducting the drive testing (Alaska Drive-Test Model), which included the drive-test information to be submitted and the format in which it should be submitted. The parameters proposed in the Notice included, for example, the submission of latitude and longitude coordinates to identify the location of the test, a timestamp for the time the test was taken, the type of device and related software used for the test, last-mile technology tested, and recorded download and upload speeds.

7. The proposed Alaska Drive-Test Model was designed to ensure that the service providers required to conduct drive testing would obtain a ''statistically significant number of tests in the vicinity of residences being covered.'' The proposed Alaska Drive-Test Model uses stratified random sampling to determine test locations within a grid system based on the service provider's reported coverage area. Under the proposal, the Commission would begin with the populated areas contained in the performance plans for each type of technology and backhaul and then overlay a one-square kilometer grid system to create a frame around the covered populated area corresponding with the performance commitments. Staff would then stratify the frame into sets of grids determined by statistical formulae based on theoretical population of the grid cells (*e.g.,* lowest population grid cells would be in the first stratum; highest population grid cells would be in the highest-numbered stratum) and would select a random sample of grid cells for testing from each stratum within the frame. The Bureau proposed that, within each grid cell, a service provider would conduct a minimum of 20 tests, consisting of download and upload components, no less than 50% of which would be conducted from a vehicle while in-motion. To be considered valid, each test would have to be conducted between the hours of 6 a.m. and 10 p.m. within the selected grid cell, and the test data would have to report all relevant parameters. Staff would construct a confidence interval for the drive-test results that would be used to verify that a provider's commitments have been met or to determine the

percentage by which the provider has failed to meet its commitments.

8. The Bureau sought comment on the parameters and proposed Alaska Drive-Test Model and on any alternatives that it should consider. GCI filed comments, and both GCI and CVW made ex parte presentations to staff about the proposed Alaska Drive-Test Model. No other party filed comments or made such presentations. Based on concerns that were expressed about the initial deadline, the Bureau extended the drive-test data-submission deadline, moving it from March 1, 2022 to September 30, 2022. The Commission will continue to monitor the situation and will remain flexible where warranted.

III. Discussion

9. We adopt the proposed parameters and the proposed Alaska Drive-Test Model with the modifications specified below. We will use data derived from these parameters, combined with FCC Form 477 coverage data and complementary middle-mile data, to verify that covered service providers have met their commitments. Upon submission of the drive test data that we discuss in this Order, a corporate officer of the mobile-provider participant must certify to the data's accuracy, consistent with the obligations of 47 CFR 54.321(a). When submitting the drive test data, a corporate officer of the mobile-provider participant must submit this certification: ''I certify that I am an officer of the reporting carrier; my responsibilities include ensuring the accuracy of certifications which are required to be reported pursuant to 47 CFR 54.321(a). The reporting carrier certifies that the data received or used from drive tests analyzing network coverage for mobile service pursuant to 47 CFR 54.321(a) are complete, accurate, and free from misrepresentation.'' The Commission staff will provide details to GCI and CVW on how to submit the drive test data.

A. Drive-Test Parameters

10. We adopt a modified version of the drive-test parameters proposed in the Alaska Drive Test Public Notice (attached as Appendix A). These parameters specify the categories of data to be collected as well as the data structure and format in which the data must be reported. In addition to the parameters the Bureau proposed, the Bureau adopts other changes to the parameters; most notably, we have altered the parameters in Appendix A with respect to the data to be collected for 2G/Voice. In the Notice, the Bureau proposed that, for 2G, a data rate of 22.8 kbps or higher for download and upload tests would be appropriate because that should be a minimally sufficient speed to provide a serviceable voice call. GCI expressed concern that speed-test data would not accurately represent the ability to place a voice call over a 2G network, particularly for non-GSM standards such as CDMA or UMTS. GCI proposed that, instead, providers demonstrate voice coverage by placing voice calls between five and 30 seconds in duration to a telephone number established for test calls.

11. We find GCI's suggestion to be a reasonable approach, and therefore we will require it instead of the approach we proposed in the Notice. Because GCI is the only provider subject to drive testing that has a 2G commitment and GCI's particular 2G requirement is voice only, we agree with GCI that a test assessing the availability of voice service would be appropriate. Accordingly, GCI must use voice calls to demonstrate its ''Voice/2G'' coverage in areas that it is required to drive test, and Appendix A now includes parameters for voice-only testing. This change from the original proposal enables GCI to enter information that records a successful call completion using 2G technology, regardless of data rate, consistent with the voice-only commitment. The new fields for GCI's voice-only testing are the voice originating, voice terminating, rxlev, and rxqual fields. The voice originating field is a field for providing information for outbound calling and the voice terminating field is for receiving inbound calls for the testing. The rxlev and rxqual fields represent data elements that are necessary to determine the signal quality and strength and corresponding quality of the network for voice calls.

12. We also adopt other modifications to the proposed data specifications for mobile speed tests. As set forth in more detail in Appendix A, we modify the proposed data specifications to add new drive-test parameters within existing categories—specifically, device Type Allocation Code (TAC), warmup duration, warmup bytes transferred, spectrum band, and success flag. Most of the parameters that we altered—device TAC, warmup duration, warmup bytes transferred, and spectrum band—resulted from the Bureau's experience constructing the Broadband Data Collection but will also aid understanding of the data derived from the Alaska Plan drive tests. The device TAC provides the type of device used in the testing and helps us better understand the results, particularly if results indicate a problem with a network that may be attributable to the type of device. The warmup bytes and duration are the bits recorded during the testing ramp-up time, and collecting ramp-up bits as a separate field is required to ensure we are accurately measuring the network's maximum transmission data rate. The spectrum band records the spectrum band or bands utilized during the drive test, which can affect wireless performance. Finally, because the drive tests need to exceed the minimum commitments in the mobile-provider participants' performance plans, the success flag field was added to record where the data indicate that the tests were successful to that end (or not).

B. Alaska Drive-Test Model

13. We adopt the proposed Alaska Drive-Test Model (attached as Appendix B), with limited clarifications and modifications. The Alaska Drive-Test Model uses a stratified random sample of a frame. A frame consists of the complete set of units within a commitment eligible to be sampled, which for the purposes of the Alaska Plan drive testing are one-square kilometer grids in which a provider has at least 100,000 square meters of covered populated area. The construction of this frame is a multi-part process. First, we will create a set of ''eligible populated areas.'' Census blocks eligible for frozen-support funding would be included, and these census blocks would be merged with the populated areas of the Alaska Population-Distribution Model. Second, staff will merge the FCC Form 477 reported coverage areas (for which a provider committed to deploy and that are subject to testing) with the eligible populated areas to create a set of ''covered populated areas.'' Third, Commission staff will overlay a grid of 1 km x 1 km squares onto the covered populated areas. Lastly, any grid cell that contains fewer than 100,000 square meters of covered populated area, or 10% of the grid cell, will be excluded from the frame.

14. The frame is divided into subsets of similar characteristics, called strata. This methodology allows fewer grid cells to be selected for testing while producing a statistically equivalent level of accuracy as sampling the entire frame, thus reducing the burden of testing. We will use the cumulative square root of the frequency (CSRF) method to define the breaks between strata based on a scale along the cumulated square root of the frequency of grid cells belonging to equal intervals of the stratification variable. Using the CSRF method will help to ensure that

grid cells with low population are confined to a single stratum within each frame. The number of strata for a frame depends on the number of grid cells in that frame and the distribution of the populations within the frame. Two to eight strata are likely to be necessary per frame.

1. Commitment-Based Frames

15. Frames are based on providers' commitments. In particular, Commission staff will create separate frames where a provider committed to different speeds based on different middle-mile or last-mile technologies in its Bureau-approved performance plan. CVW is subject to one frame because it committed to 10/3 Mbps 4G LTE in all of the areas where it receives Alaska Plan support. GCI is subject to five frames, as GCI committed to five different speeds based on various combinations of middle-mile and last-mile technologies:

- Fiber-based 4G LTE at a minimum speed of 10/1 Mbps;
- Microwave-based 4G LTE at a minimum speed of 2/.8 Mbps;
- Satellite-based 4G LTE at a minimum speed of 1/.256 Mbps;
- 3G or better at a minimum speed of .2/.05 Mbps; and
- Voice/2G.

16. GCI argues that, instead of basing frames on middle-mile and last-mile technologies, we should assign frames based only on the speeds a provider reports via its FCC Form 477 filings. GCI asserts that a speed-only approach better reflects the intent of the Alaska Plan Order and that the Commission intended to use information about middle-mile and last-mile technologies only to determine whether mobile carriers' proposed speed commitments were reasonable. Pointing to language in the Alaska Plan Order, which states that drive tests must show mobile transmissions that meet or exceed ''the speeds delineated in the approved performance plans,'' GCI contends that the Bureau's drive-test proposal ''changes the yardstick by which providers will be measured.''

17. We disagree. The Alaska Drive-Test Model's integration of middle-mile and last-mile technologies is consistent with the Alaska Plan Order, the Commission's rules, the provider performance plans that the Bureau approved, and the policy undergirding the Alaska Plan. In 2016, the Commission sought to advance, to the extent possible, the number of locations in Alaska that have access to at least 10/1 Mbps 4G LTE. It permitted the Bureau to approve lesser commitments ''in particular circumstances'' if a provider's ability to achieve 10/1 Mbps 4G LTE was limited, for example, by a lack of access to middle-mile infrastructure. In areas where such limitations did not exist, providers were expected to extend 4G LTE service, which was the latest mass-market technology available at the time the Commission adopted the Alaska Plan. Additionally, if backhaul becomes newly available in an area where a provider has not committed to provide 10/1 Mbps 4G LTE, then that provider must submit revised commitments that take into account the new backhaul option. While GCI argues that the Commission only intended to use information about middle-mile and last-mile technologies to determine whether mobile providers' proposed speed commitments were reasonable, GCI does not address how the Commission could determine whether a mobile provider has met those commitments without also collecting information about its speeds for each specified technology and middle-mile facility.

18. Contrary to GCI's assertions, we have not ''change[d] the yardstick by which providers will be measured.'' To implement the framework described above, the Commission required providers to identify in their performance plans the populations that they proposed to cover at the five- and 10-year milestones, ''broken down for each type of middle mile, and within each type of middle mile, for each level of data service offered.'' This approach is mirrored in the Commission's rules, which require mobile providers to build out to the ''population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone.'' In addition, every performance plan that providers submitted and the Bureau approved—including GCI's original plan and updated plans—identifies the providers' speed commitments based on available middle- and last-mile technology employed.

19. The Alaska Drive-Test Model, by taking into account middle- and last-mile technologies, will allow CVW and GCI to show that they have met the speed commitments delineated in their approved performance plans. While GCI is correct that the drive-test data will demonstrate network throughput (*i.e.,* speeds), the minimum speeds it is required to show are—and must be—''delineated'' in its approved plan in terms of populations covered by specific combinations of middle- and last-mile technologies. GCI's suggested reading of the Commission's rules, in contrast, would require us to ignore the rules' repeated references to middle- and last-mile technologies in describing how providers are required to identify and meet their commitments. The Commission could have required in the Alaska Plan Order that providers base their commitments solely on speed criteria, but it explicitly required the inclusion of middle-mile and last-mile technology for the population served as part of the performance plans, consistent with the Commission's goal of expanding Alaskans' access to 10/1 Mbps 4G LTE technology to the greatest extent possible, unless an exception was warranted.

20. Moreover, failing to account for last-mile and middle-mile technologies in the Alaska Drive-Test Model could allow participants to skirt their commitments. For example, speed tests conducted in close proximity to a tower providing 3G service using microwave backhaul could produce test results of 10/1 Mbps or better. If that grid cell's population is credited toward a provider's fiber-fed 4G LTE performance obligation, this would offset the need for the provider to demonstrate 10/1 Mbps 4G LTE service in another area that should otherwise receive this level of service based on fiber-based middle-mile facilities.

21. Finally, we note that, under the Alaska Plan, approval of a provider's plan to maintain lower levels of technology ''in particular circumstances . . . to a subset of locations'' is limited to those locations; it is not a fungible token to provide lower levels of service anywhere in the provider's service area. In other words, a provider may not underperform in areas where it committed to 10/1 Mbps 4G LTE, even if it overperforms in areas where it was allowed a lesser commitment due to ''unique limitations'' in those areas. To the extent ''unique limitations'' no longer prevent a provider from achieving 10/1 Mbps 4G LTE in an area, the appropriate course of action would be for the provider to update its performance plan, as required under the terms of the Alaska Plan Order.

2. Grid Cells With No Roads

22. Some parts of remote Alaska lack any roads, and some large areas have a low population density. Nonetheless, providers committed to serve many of these areas, and they receive support from the Alaska Plan to do so. As discussed further below, we cannot ignore these areas when evaluating CVW's and GCI's performance commitments, and thus we find it necessary to include in the testing sample grid cells with no roads as well as grid cells with low populations,

consistent with the Alaska Plan Order and our proposals in the Alaska Drive Test Public Notice. While we cannot ignore these areas when evaluating CVW's and GCI's performance commitments, we note that the Alaska Drive-Test Model includes a number of design features that should limit the areas without roads or with little population that the two providers must test, as we detail below.

23. We acknowledge that remote Alaska has unique challenges, including roadless areas, and these unique challenges are the reason the Commission created a separate universal service support mechanism for Alaska. Some of the roadless remote areas, however, are in the vicinity of covered residences and must be tested to achieve statistically significant testing of each provider's coverage sufficient to enable the Bureau to determine whether a provider has satisfied its commitments. A quality communications network is all the more essential where the local population lacks roads, and to the extent that providers have received universal service support to cover such populated areas, they are required to demonstrate their claimed coverage.

24. We also find it necessary to include in the testing sample grid cells with a modeled population of less than one person—including such grid cells with no roads—consistent with the Alaska Plan Order and our proposals in the Alaska Drive Test Public Notice. Providers committed to cover delineated eligible populations in their performance plans, including some areas that are sparsely populated. While providers only test populated areas, in some instances, the number of grid cells within the populated area of a census block can outnumber the people. Where the aggregate number of grid cells in a covered populated area exceed the number of people in that area, such grid cells will appear to have less than one person. However, to ''demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered,'' these areas are necessary to test as part of the coverage that the provider committed to and receives support to provide mobile service.

25. GCI argues that it should not be required to test sparsely populated grid cells, and both GCI and CVW express concern that testing in grid cells with no roads will be extremely difficult. But the Alaska Drive-Test Model has design features that should help address concerns about these grid cells. The model stratifies each frame using CSRF based on grid-level estimates of covered population. This includes creating a single stratum within each frame of all grid cells with a population of less than one person. Further, the sample is apportioned across a frame using Neyman allocation, a technique that draws more samples from more highly populated strata relative to lower populated strata. Accordingly, the stratum containing grid cells with a population of one person or more will have a greater number of grid cells compared to strata containing grid cells of population less than one, and more samples will be drawn from the higher populated strata. This has a compounding effect that limits the number of grid cells with a population less than one that will be selected for testing. In addition, the Alaska Population-Distribution Model distributes population near roadways for census blocks that contain roads, making it more likely that areas near roads will be covered populated areas and selected for testing.

26. GCI claims that many testable grid cells are too sparsely populated for worthwhile testing. GCI's analysis of the Alaska Drive-Test Model claims that 53% of the grid cells would have less than one person and that based on GCI's analysis, 48% of grid cells would have less than one person per grid cell and no roads. GCI argues that grid cells with less than one person should be eliminated from testing and grid cells with no roads should be required sparingly, given the burdens of conducting drive testing. Similarly, CVW notes that some grid cells would be inaccessible mountains or islands with no public access. GCI evaluated the grid cells in its coverage areas and determined that 59% of the grid cells would have no roads, that 49% of the grid cells would be more than a mile from the nearest road, and that 12% of the grid cells would be more than ten miles from the nearest road.

27. GCI has not presented its data or the methodology underlying its calculations, and we were not able to reproduce it. However, for several reasons, we believe that GCI's calculations result in significant over-estimates. First, the Alaska Drive-Test Model's de minimis population standard has the effect of reducing the number of grid cells without roads that would otherwise be included in the testing frame. Second, as noted above, we designed the sample and stratification so that there would be substantially more grid cells that are populated compared with grid cells with population less than one in the sampling methodology to increase the probability that a populated grid cell would be selected for testing compared with a grid cell with population less than one. Third, because there is a high correlation between populated grid cells and grid cells with roads, our sampling methodology should not only increase the percentage of populated grid cells that are tested but also increase the percentage of tested grid cells that have roads. Accordingly, for all of these reasons, we believe that GCI's calculations result in over-estimates.

28. We also disagree with GCI that the burdens of testing in these areas outweigh the benefits of testing in areas where GCI is receiving universal service support. If we excluded such grid cells in the sampling, GCI would continue to receive Alaska Plan support in remote areas of Alaska without adequate means to verify coverage, which runs contrary to the principles outlined in the Alaska Plan Order. Low population density and areas with no roads are features in many parts of remote Alaska—a fact of which CVW and GCI were aware when they elected to participate in the Alaska Plan—yet these providers nonetheless committed to covering these remote areas using universal service support. For these reasons, we decline to eliminate testing for grid cells with no roads, including those grid cells with a population of less than one. Although CVW and GCI must drive test some grid cells that do not have roads, the Commission foresaw this potential issue and accounted for it by allowing drive tests to be conducted ''by means other than in automobiles on roads.'' We provide further relief for the providers by allowing use of unmanned aircraft systems (UASs), subject to the waivers we describe below.

a. Grid Cells With No Roads and Population of One or Greater

29. For the reasons described above, we find it necessary to require testing of grid cells with no roads and population of one or greater. To the extent a grid cell with a population of one or greater does not include an accessible road, the accommodation to use off-road vehicles should improve testability. If there are instances where a mobile-provider participant claims that it cannot use on-the-ground, off-road vehicles to test such a grid cell, it may seek a waiver from the Bureau to use a UAS to test that particular grid cell. This waiver request should provide a statement regarding why good cause exists to waive the on-the-ground testing requirement for that grid cell, contain evidence supporting that claim, and be filed in WC Docket No. 16–271. UASs should mirror on-the-ground vehicles to the extent possible, matching on-the-

ground vehicle speed (for example, matching nearby speed limits) and flying at the lowest, safest possible elevation, to best reflect on-the-ground usage. Additionally, UASs performing drive tests must: (1) At all times operate at less than 200 feet above ground in remote areas of Alaska where road-based testing is impractical/impossible; (2) limit power to the minimum necessary to accomplish testing; and (3) upon receipt of a complaint of interference from a co-channel licensee, notify the Commission and either remedy the interference or cease operations.

30. To the extent that a mobile provider seeks to use UASs to conduct testing, it may do so if the allocation and service rules permit airborne use of the spectrum that will be used to provide the mobile service to be tested as part of the drive tests. Otherwise, the provider must additionally obtain a waiver from the Commission (pursuant to Section 1.925) of any airborne limitations.

b. Grid Cells With No Roads and Population of Less Than One

31. For the reasons described above, we also find it necessary to require testing of certain grid cells with no roads and population of less than one. However, as an alternative to testing with an automobile or other terrestrial off-road vehicle (*e.g.,* snowmobile or all-terrain vehicle), we will allow use of UASs for the first, and least densely populated, stratum without requiring the waiver that we will require GCI and CVW to obtain to use UASs for testing grid cells with one or more people. GCI and CVW both express concern with drive testing where no roads exist. This additional UAS option is provided to address their concerns. Of the two to eight strata per frame, the first stratum contains the grid cells with less than one person per grid cell and no roads. As these grid cells are likely the most logistically difficult to test and may contain uninhabitable or untraversable terrain, the added flexibility offered by a UAS without a waiver should make the testing easier for these areas. UAS performing drive tests must: (1) At all times operate at less than 200 feet above ground in remote areas of Alaska where road-based testing is impractical/impossible; (2) limit power to the minimum necessary to accomplish testing; and (3) upon receipt of a complaint of interference from a co-channel licensee, notify the Commission and either remedy the interference or cease operations. We note that while we will not require a waiver for use of UASs for testing these grid cells, we will require a waiver for use of any allocation or service rules that prohibit airborne use of the spectrum that will be used to provide the mobile service to be tested as part of the drive tests (consistent with the requirement we adopt above for use of UAS to test grid cells with no roads and a population of one or more people).

3. Distant Communities

32. GCI expresses concern that the number of ''communities'' that it needs to travel to is the biggest driver of its testing costs. GCI notes that there are 205 communities within its footprint and that, while GCI may be able to drive to some communities, ''given the distances between communities and the lack of interconnected roads, [GCI's testing teams must] often [travel to these communities] by small aircraft.'' To the extent GCI has to charter a flight to many of these communities, this would increase the costs and complexities associated with drive testing all of its assigned grid cells.

33. To help reduce the burdens of traveling to many different communities, we have added an optimization to the sampling process that will likely reduce the number of incorporated and census designated places where GCI and CVW would have to travel. Given that GCI did not provide a definition of ''communities,'' we believe incorporated and census designated places are the closest proxy, as there are 284 incorporated and census designated places in GCI's footprint, and incorporated and census designated places are integrated into census data, which are used throughout this modeling. We implement these additional steps in direct response to GCI's concerns and describe this additional process in Appendix B, infra.

4. In-Motion Testing Requirement

34. We adopt the proposal to require at least 50% of drive tests to be conducted while in motion. Requiring that 50% of the drive tests be conducted while in motion strikes a balance of ensuring that the drive tests are a sufficient representation of how consumers use their mobile devices, which is both in a stationary and in-motion environment. Requiring some in-motion tests also helps ensure that tests are conducted in multiple locations within the grid cell.

35. We disagree with GCI that the proposed in-motion requirement is unnecessary. The Alaska Plan Order referred to these as ''drive tests,'' which suggests some degree of motion consistent with a driving experience. The drive testing data to be submitted is to ''show[ ] mobile transmissions to and from the network meeting or exceeding the speeds delineated in the approved performance plans.'' Mobile service, as defined in the Communications Act and the Commission's rules, supports an in-motion requirement for at least some drive tests. Moreover, requiring drive tests in motion is also consistent with the in-vehicle mobile propagation modeling that mobile broadband service providers must submit as part of the Broadband Data Collection, which providers could verify through on-the-ground data submitted in response to cognizable challenges and/or verification inquiries initiated by Commission staff. The Commission also explained for the Broadband Data Collection that it was important for consumers to be able to challenge mobile broadband service providers' coverage in both stationary and in-vehicle (*i.e.,* in-motion) environments. Because mobile service assumes a service that works with mobile stations that are designed to move and ordinarily do move, in-motion tests are necessary to ensure that mobile service is being provided.

36. GCI contends that in-motion tests from a non-standard road or a trail could be hazardous with little daylight and winter weather. The concerns posed by drive testing during winter weather are no longer relevant because we have moved the deadline for the data from March 1, 2022, to September 30, 2022. GCI further argues that an in-motion requirement is unnecessary because many grid cells lack roads and may not reasonably accommodate in-motion tests and, similarly, that many grid cells with roads have small populated areas, which makes it difficult to conduct a sufficient number of in-motion tests. As noted previously, where roads are insufficient, the drive test model allows tests to be conducted by vehicles other than automobiles on roads. Further, we have limited the grid cells with small testing areas by removing from drive testing the de minimis grid cells with less than 100,000 square meters of covered populated area.

5. Early Upgraded Areas

37. Mobile service providers participating in the Alaska Plan are free to upgrade areas early with technologies beyond what they have committed to, notwithstanding the commitments set out in their performance plans. In the Alaska Drive Test Public Notice, the Bureau stated, for instance, that where providers have deployed 5G–NR, it would be included in the ''LTE'' frame. Moreover, GCI updated its performance

plan twice based on commercial availability of new middle-mile infrastructure, consistent with the Alaska Plan Order requirements, but it did not commit to improve those areas by the five-year milestone (positioning itself to be able to upgrade those areas by the final, 10-year milestone instead).

38. GCI has noted that, in some areas, it ''has deployed a more advanced technology but does not yet provide the speed associated with that technology or frame. For example, ''an area served with fiber may have LTE technology, but the locations more distant from the tower . . . do not receive 10/1 Mbps.'' GCI claimed it ''never expected that pops served with less than 10/1 Mbps would count toward the number of pops served at 10/1 Mbps but also never expected the Commission to disregard them completely for the purpose of assessing the number of pops served with 2/.8 Mbps or lower speeds.'' GCI also claimed that, if it believed all fiber areas upgraded to 4G LTE were required to have 10/1 Mbps or better, it would have delayed some of its 4G LTE deployments until year six or later and excluded those areas as appearing on its FCC Form 477 submission as having 4G LTE.

39. We agree with GCI that we should not punish providers for deploying 4G LTE to some areas earlier than they committed to in their performance plan at the five-year milestone. Accordingly, where 4G LTE is indicated on FCC Form 477 at less than 10/1 Mbps in fiber-based areas, those areas will be included in the 3G frame (3G or better frame) and will be attributed to 3G commitments. If we were to include these areas (which may not yet be engineered to achieve 10/1 Mbps) in the fiber-based 4G LTE frame, then it could lead to higher fail rates in the frame. These higher fail rates would make GCI appear as if it had not met its commitments in places where GCI actually met (or exceeded) its five-year commitments. The approach we adopt will therefore avoid punishing GCI where it deployed 4G LTE early but was not ready to add those areas to its five-year commitments of 10/1 Mbps fiber-based LTE service. We will follow a similar approach for 4G LTE areas that would be included in the microwave and satellite 4G LTE frames. For example, if GCI deployed 4G LTE to a microwave-based area, as indicated by FCC Form 477 and corresponding middle-mile data, but GCI's FCC Form 477 filing shows minimum expected speeds as less than 2/.8 Mbps for such areas, then those areas will be included in the 3G or better frame. This clarification should ensure that GCI is being held to its commitments while not being penalized for deploying more advanced technology ahead of schedule.

6. Multiple Last-Mile Technologies in a Grid Cell

40. When multiple technologies overlap within a grid cell, Commission staff will attribute the overlapped area to the frame with the more advanced technology. For example, in grid cells where fiber-based 4G LTE at 10/1 Mbps and 3G completely overlap in a grid cell, staff will attribute the grid cell to the fiber-based 4G LTE frame for satisfaction of the fiber-based 4G LTE commitments. Attribution to the more advanced technology allows the provider to receive due credit where it has built out consistent with its most rigorous performance requirements. Alternatively, in grid cells where fiber-based 4G LTE at 10/1 Mbps only partially overlaps 3G coverage, staff will attribute the grid cell portion covered by fiber-based 4G LTE to the fiber-based 4G LTE frame and the remaining covered area of the grid cell to the 3G frame. In this instance, a grid cell could be contained in multiple frames.

41. GCI claimed that more than half of the cells within its covered populated areas have multiple or overlapping technologies. GCI argued that, where a grid cell is both in a 4G LTE and 3G frame, once it passes for 4G LTE, the grid cell should be removed from the 3G frame so that pops in the 3G frame are not attributed as a ''fail.''

42. We clarify that if a grid cell is selected for both 4G LTE and 3G testing, staff would evaluate both selections from the same drive tests. If the drive tests show that GCI passes the 4G LTE standard for that grid cell, then GCI will also receive credit for that grid cell passing the 3G standard; thus, GCI would not receive a ''fail'' for the 3G selection, obviating the need to remove the grid cell from the 3G frame. If, however, the testing threshold only passes for the 3G requirements, then the grid cell would be attributed as a ''pass'' to 3G but a ''fail'' as to 4G LTE, consistent with the pass/fail approach described below.

7. Pass/Fail Approach

43. We adopt the pass/fail approach to testing for the Alaska Drive-Test Model proposed in the Alaska Drive Test Public Notice. For each grid cell in the sampling frame, the results of the tests will establish whether the provider delivers coverage at the minimum speeds to which it committed. When replicated throughout all of the randomly selected grid cells that are required for testing, the Commission will evaluate the percentage of the provider's coverage area where it has met its commitments. To demonstrate coverage in an area with a statistically significant number of tests, the Alaska Drive-Test Model requires the tests to pass at a rate capable of ensuring that the provider has met its milestones.

a. Pass/Fail Testing

44. We adopt the following pass/fail methodology for the Alaska Drive-Test Model: 85% of drive test results in a grid cell must show speeds that meet or are above the minimum committed-to speed for that frame in order for the service to be considered ''available'' in that grid cell. Successful tests measure whether a mobile-provider participant meets a minimum expected speed in a given grid cell, with ''expected'' defined as being available at least 85% of the time. It does not mean that 85% of the population of that grid cell can expect to receive the tested speed 100% of the time. Although the Alaska Plan Order required mobile-provider participants to commit to a minimum download and upload speed(s), we do not expect mobile-provider participants to meet the minimum speed requirements on every single test, given that the performance of wireless networks is highly variable. Accordingly, we have set the pass rate at 85% to account for this variability.

45. To the extent that GCI may intimate that the 85% pass rate is too high, we do not alter it. The 85% pass rate we adopt for the Alaska Plan drive tests is similar to—but more lenient than—both the propagation modeling standard and the on-the-ground challenge data threshold adopted for the Broadband Data Collection. In the Second Report and Order in that proceeding, the Commission defined the parameters that service providers must use when modeling whether broadband is available using technology-specific minimum download and upload speeds with a cell edge probability of at least 90% and assuming minimum 50% cell loading. Additionally, mobile providers that submit on-the-ground speed test data to rebut a challenge to their coverage data are required to meet analogous thresholds to those required of challengers and demonstrate that sufficient coverage exists at least 90% of the time through a challenged area. These defined parameters in the Broadband Data Collection are more stringent than the propagation coverage relied on for the Alaska Plan drive test methodology, which uses the provider-defined propagation coverage from Form 477. Given that the provider has more discretion to set coverage parameters more favorably for itself in its Form 477 filings, it would have

actually been appropriate for us to adopt a higher pass rate percentage than the Broadband Data Collection; we nonetheless adopt the 85% pass rate here to eliminate all doubt about the fairness of the pass rate. Neither GCI nor CVW propose an alternative percentage as more appropriate for the pass rate as applied by the model. We find compelling reasons to adopt an 85% pass rate, as we proposed, for Alaska Plan drive test data.

46. GCI argues that it should receive partial credit for the percentage of tests recorded above the minimum threshold when that percentage is below 85%. GCI states that ''rather than applying the 85 percent pass rate as an 'all or nothing' bar for allowing a cell to be deemed covered, pops could count toward the commitment levels in proportion to the speeds that the speed tests confirm.'' GCI provides the example that, ''if 50 percent of the drive tests show speeds at or above 10/1 Mbps and 50 percent of the tests show speeds of .2/.05 Mbps, then 50 percent of the pops associated with that cell would count toward compliance with the 10/1 Mbps commitments, and 50 percent of the pops would count toward compliance with the <.2/.05 Mbps commitments.''

47. We do not find GCI's arguments persuasive. Our statistical framework is designed around grid cells being the smallest unit of testing and is not designed to measure partial grid cells. GCI's example of counting a 50% pass rate as indicative of 50% of the population receiving service is an incorrect interpretation of what testing represents—rather, a 50% pass rate indicates that service is available 50% of the time. Further, GCI's proposal to count failed tests toward a lesser standard is incompatible with random sampling as it would apply results to a standard that was not selected for testing in a given grid cell. This would mean that results are no longer random.

48. Moreover, GCI and CVW committed to provide ''minimum expected upload/download speeds'' in their performance plans. In addition, GCI was the only provider to emphasize in its performance plans that it would be responsible for this minimum speed throughout all of its committed-to coverage area to the edge. Thus, GCI's own commitments emphasize that it needs to provide the minimum speeds throughout the coverage area of the specified commitment and should not receive partial credit to the extent it did not provide its minimum committed-to speed to the edge of such coverage.

49. In addition, GCI's suggested ''partial credit'' approach would require an alternative drive-test methodology with a corresponding assessment regarding how that methodology would be ''statistically significant.'' But GCI does not provide a usable alternative methodology to replace the proposed drive test model. GCI's edit to the proposed drive-test methodology lacks a statistical basis from which, based on a limited set of tests, we could infer whether GCI had met its commitments. Partial credit also is inconsistent with the approach adopted in the Broadband Data Collection proceeding.

50. Finally, while we acknowledge that service declines farther away from the cell site, this service quality deterioration can be addressed in a number of ways, including adding more cell sites. GCI receives support to meet its commitments, and if it does not meet them initially, the drive tests can help it understand where improvements are needed in its network, which will help it deliver the services it committed to Alaskans.

b. No Lower Speed Tier Credit for Failed Grid Cells

51. The Alaska Drive-Test Model's use of frames will allow providers to separately test the areas where they committed to different minimum speeds based on middle-mile availability and last-mile technology used, consistent with how the providers delineated these speeds in their performance plans. In doing so, the Alaska Drive-Test Model will ensure that the drive tests yield data that allow Commission staff to assess whether the providers have met their commitments.

52. GCI expressed concern that the Alaska Drive-Test Model disregards data that show improvement, if fewer than 85% of tests in a grid cell are below the minimum speed threshold for a frame. GCI provided the example that, ''if 80 percent of tests in a cell reflect speeds of 10/1 Mbps, and 20 percent of tests reflect speeds of 9/1 Mbps, the cell is deemed unserved at any speed—even though all tests reported far faster speeds than required in the next lower speed tier (2/.8 Mbps.).'' Where GCI fails a 4G LTE/3G grid cell for 4G LTE, GCI argued that, if the speeds are sufficiently above the 3G commitment, the grid cell should be a ''pass'' for the 3G frame.

53. Where a grid cell is selected for only 4G LTE testing, we cannot credit the grid cell to 3G if it fails the 4G LTE speed tier. This suggestion, if adopted, would result in an under-sampling for the 4G LTE frame and an oversampling for the 3G frame. Further, this would have the effect of removing population from one frame and adding it to a different frame, thereby disturbing the original distribution of the grid cells across stratum as calculated prior to testing. For example, suppose there is a grid cell for which one of the providers has claimed 100 people are covered by 4G LTE, but for which testing shows only 80% of the results exceed the minimum performance threshold. GCI's proposal would reallocate the population from the 4G LTE frame (and the stratum within the 4G LTE frame to which that grid cell is assigned) to a different frame and stratum for which the testing would show that the performance benchmarks have been met (in this case, the 3G frame). However, as the stratification and sample allocation processes primarily consider population, this would mean that, after testing was completed, the total populations of the strata would have changed and, accordingly, the strata within each frame would no longer have the correct distribution of grid cells. Additionally, the number of samples optimally selected in each frame would also no longer be correct. This, in turn, would mean that the results could no longer be measured at the specified 90% confidence interval the Alaska Drive-Test Model sets for statistical significance.

c. Waterfall Model

54. For the reasons described above, the Alaska Drive-Test Model does not allow for partial credit where a mobile-provider participant fails a test in a higher performance tier. Frames are created based on the population covered at a particular minimum speed by technology from FCC Form 477 data set plus additional middle-mile data. If, however, the FCC Form 477 data show population coverage beyond what is committed to at the five-year mark, then the testing of that frame could show that the mobile-provider participant covered more people than it committed to in its performance plan. Where this happens, the commitments for the next lower tier last-mile technology will be accredited with the excess covered population of the higher technology tier.

55. GCI suggests that it should receive partial credit for providing service at lower speeds if it does not meet the 85% successful testing standard at the sampled technology, and for support, it cites to the Alternative Connect America Model (ACAM) waterfall methodology. For the ACAM waterfall methodology, a provider must satisfy a particular number of locations at a particular speed tier, and if a provider satisfies more than that, then the credit flows to the satisfaction of the next lower speed tier. For example, if 60 locations need to have 25/3 Mbps performance, 10 locations must have 10/1 Mbps

performance, and 30 locations must have 4/1 Mbps performance, and the provider supplies 80 locations with 25/3 Mbps, then the 25/3 Mbps and 10/1 Mbps speed tier commitments would be fully satisfied, and 4/1 Mbps speed tier would be partially satisfied.

56. The ACAM waterfall methodology does not, as GCI suggests, support allowing failed performance at higher speed tiers and receiving credit for those failed tests in the lower speed tiers. The ACAM waterfall methodology requires complete satisfaction of the higher performance tier, and if the provider connects locations beyond the minimum required in the higher performance tier, the excess coverage would flow down to the next level tier. If the provider does not completely satisfy the higher tier, then no excess is present, and no ''waterfall'' occurs: The provider needed to deploy to more locations in that tier and does not receive credit in other tiers for this failure. GCI's proposal is thus inconsistent with the ACAM waterfall methodology.

57. The Alaska Drive-Test Model, as originally proposed and adopted here, includes a waterfall methodology similar to the one used in ACAM that is tailored to the drive-test requirement. Specifically, where a provider has committed to multiple tiers of technology (*i.e.,* 2G, 3G, and 4G LTE), any excess coverage would be applied to the next lower tier of technology. In the Alaska Drive Test Public Notice, the Bureau provided the example: ''if a provider has committed to cover 25,000 people with 4G LTE and the upper limit of the confidence interval shows adequate coverage for 30,000 people, then the remaining 5,000 [population] coverage can be applied to its 3G commitment.'' The Alaska Drive Test Public Notice further stated that ''[t]his process is iterative, so any further excess coverage can be applied to its 2G commitment.'' In other words, the Alaska Drive-Test Model includes a waterfall methodology that would credit lower tier commitments when there is excess performance of the higher tier commitments.

IV. Procedural Matters

A. Final Regulatory Flexibility Certification

58. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

59. An Initial Regulatory Flexibility Certification (IRFC) was incorporated in the Notice in this proceeding. In the Notice, the Bureau observed that the drive testing proposals required by the Alaska Plan apply only to wireless participants receiving more than $5 million in annual Alaska Plan support, excluding the smaller wireless participants that receive less than that amount in annual support. And, the proposals, if adopted, would apply to only two entities, one of which does not qualify as a small entity. Therefore, we certify that the requirements of the Order will not have a significant economic impact on a substantial number of small entities.

60. The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

B. Congressional Review Act

61. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

62. Accordingly, *it is ordered,* pursuant to the authority contained in Sections 1 through 4, 201, 254, 301, 303, 307, 309, 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201, 254, 301, 303, 307, 309, 332 and Sections 0.91, 0.131, 0.291, 0.311, 54.317, 54.320, and 54.321 of the Commission's rules, 47 CFR 0.91, 0.131, 0.291, 0.311, 54.317, 54.320, and 54.321, and the delegated authority contained in the Alaska Plan Order, 31 FCC Rcd 10139, 10160, 10166 through 67, paras. 67, 85, this Order *is adopted,* effective 30 days after publication in the **Federal Register**, except that the deadline for filing updated coverage data shall be on 10 days after the adoption of the Order in accordance with the Public Notice.

63. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

64. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order and Request for Comment, including the Initial Regulatory Flexibility Certification and the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff Wireless Telecommunications Bureau.

Appendix A—Mobile Speed Test Data Specification

1. Overview

The Alaska Plan requires certain plan participants to conduct and report speed tests of their networks, as described in this Order and appendices. Appendix A describes the data to be collected and the format in which it is to be reported.

2. Sample Data

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    "manufacturer": "Google",
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    "operating_system": "Android 12",
    "device_tac": "35142059",
    "app_name": "FCC Speed Test app",
    "app_version": "2.0.4058",
    "provider_name": "GCI",
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       "duration": 4997185,
       "bytes_transferred": 97382448,
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          "physical_cell_id": 101,
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    }
   }
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}
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3. Mobile Speed Test Data

This section details the data structure common for all mobile speed test data in the Alaska Plan. This file contains records of each mobile speed test in JavaScript Object Notation (JSON) format matching the specification in the table and sections below:

Field	Data type	Example	Description/notes
submission_type	Enumerated	Alaska Plan	Type of data submission. —*Value must be* "*Alaska Plan*".
submissions	Array [Submission Object]		List of drive-test data submissions. *Note: The specification for the Submission Object is described in Section a.*

a. Submission Object

Field	Data type	Example	Description/notes
test_id	String	1599236609	Unique identifier used by the app or entity to differentiate tests. —*Value must be unique across all data submitted by the same entity.*
device_type	Enumerated	Android	Type of device. —*Value must be one of the following:* {*iOS/Android/Other*}.
manufacturer	String	Google	Name of the device manufacturer.
model	String	PIXEL 6	Name of the device model.
operating_system	String	Android 12	Name and version of the device operating system.
device_tac	String	35142059	8-digit Type Allocation Code of the device. —*Value is not available on iOS and may be null for these device types.* —*Value may be null if the device does not return a valid value or else returns a value of unknown.*
app_name	String	FCC Speed Test app	Name of the mobile speed test app.
app_version	String	2.0.4058	Version of the mobile speed test app.
provider_name	String	GCI	Name of the mobile service provider.

Field	Data type	Example	Description/notes
tests	Test Object		Information about the test metrics. *Note: The specification for the Test Object is described in Section b.*

b. Test Object

Field	Data type	Example	Description/notes
download	Download Test Object		Information about the download test metric. *Note: This object is only required for 3G, 4G LTE, and 5G–NR network generation speed tests and would be omitted for 2G network generation voice tests.* *Note: The specification for the Download Test Object is described in Section c.*
upload	Upload Test Object		Information about the upload test metric. *Note: This object is only required for 3G, 4G LTE, and 5G–NR network generation speed tests and would be omitted for 2G network generation voice tests.* *Note: The specification for the Upload Test Object is described in Section d.*
voice_terminating	Mobile Terminating Voice Test Object.		Information about the mobile terminating voice test metric. *Note: This object is only required for 2G network generation voice tests and would be omitted for 3G, 4G LTE, and 5G–NR speed tests.* *Note: The specification for the Mobile Terminating Voice Test Object is described in Section e.*
voice_originating	Mobile Originating Voice Test Object.		Information about the mobile originating voice test metric. *Note: This object is only required for 2G network generation voice tests and would be omitted for 3G, 4G LTE, and 5G–NR speed tests.* *Note: The specification for the Mobile Originating Voice Test Object is described in Section f.*

c. Download Test Object

Field	Data type	Example	Description/notes
timestamp	Datetime	2021–07–08T09:02:42–08:00	Timestamp of the time at which the test metric commenced. *—Value must match valid ISO–8601 format, including seconds and timezone offset, i.e.,: YYYY–MM–DD[T]hh:mm:ss±hh:mm.*
warmup_duration	Integer	3000622	Duration in microseconds that connection took to stabilize (*e.g.,* TCP slow start) before the test metric commenced.
warmup_bytes_transferred	Integer	31900808	Measured total amount of data in bytes that were transferred during the period the connection took to stabilize (*e.g.,* TCP slow start) before the test metric commenced.
duration	Integer	4997185	Duration that the test metric took to complete in microseconds.
bytes_transferred	Integer	97382448	Measured total amount of data in bytes that the test metric transferred.
bytes_sec	Integer	19487461	Measured number of bytes per second that the test metric transferred.
locations	Array [Location Object]		List of geographic coordinates of the locations measured during the speed test. *Note: The specification for each Location Object element is described in Section g.*

Field	Data type	Example	Description/notes
cells	Array [Cell Object]		List of cellular telephony information measured during the speed test. *Note: The specification for each Cell Object element is described in Section h.*
success_flag	Boolean	true	Boolean flag indicating whether the test completed successfully and without a change in state or connectivity.

d. Upload Test Object

Field	Data type	Example	Description/notes
timestamp	Datetime	2021–07–08T09:02:51–08:00	Timestamp of the time at which the test metric commenced. *—Value must match valid ISO–8601 format, including seconds and timezone offset, i.e.,: YYYY–MM–DD[T]hh:mm:ss±hh:mm.*
warmup_duration	Integer	3000213	Duration in microseconds that connection took to stabilize (*e.g.,* TCP slow start) before the test metric commenced.
warmup_bytes_transferred	Integer	8337402	Measured total amount of data in bytes that were transferred during the period the connection took to stabilize (*e.g.,* TCP slow start) before the test metric commenced.
duration	Integer	5000085	Duration that the test metric took to complete in microseconds.
bytes_transferred	Integer	15129062	Measured total amount of data in bytes that the test metric transferred.
bytes_sec	Integer	3025761	Measured number of bytes per second that the test metric transferred.
locations	Array [Location Object]		List of geographic coordinates of the locations measured during the speed test. *Note: The specification for each Location Object element is described in Section g.*
cells	Array [Cell Object]		List of cellular telephony information measured during the speed test. *Note: The specification for each Cell Object element is described in Section h.*
success_flag	Boolean	true	Boolean flag indicating whether the test completed successfully and without a change in state or connectivity.

e. Mobile Terminating Voice Test Object

Field	Data type	Example	Description/notes
timestamp	Datetime	2021–07–08T09:02:42–08:00	Timestamp of the time at which the test metric commenced. *—Value must match valid ISO–8601 format, including seconds and timezone offset, i.e.: YYYY–MM–DD[T]hh:mm:ss±hh:mm.*
duration	Integer	2001681	Duration that the test metric took to complete in microseconds. *—Value must be between 5000000 and 30000000 (i.e., between 5 and 30 seconds).*
locations	Array [Location Objects]		List of geographic coordinates of the location(s) measured during the test. *Note: The specification for each Location Object element is described in Section g.*
cells	Array [Cell Objects]		List of cellular telephony information measured during the test. *Note: The specification for each Cell Object element is described in Section h.*
success_flag	Boolean	true	Boolean flag indicating whether the test completed successfully and without a change in state or connectivity.

f. Mobile Originating Voice Test Object

Field	Data type	Example	Description/notes
timestamp	Datetime	2021–07–08T09:02:42–08:00	Timestamp of the time at which the test metric commenced. —*Value must match valid ISO–8601 format, including seconds and timezone offset, i.e.: YYYY–MM–DD[T]hh:mm:ss±hh:mm.*
duration	Integer	2005309	Duration that the test metric took to complete in microseconds. —*Value must be between 5000000 and 30000000 (i.e., between 5 and 30 seconds).*
locations	Array [Location Objects]		List of geographic coordinates of the location(s) measured during the test. *Note: The specification for each Location Object element is described in Section g.*
cells	Array [Cell Objects]		List of cellular telephony information measured during the test. *Note: the specification for each Cell Object element is described in Section h.*
success_flag	Boolean	true	Boolean flag indicating whether the test completed successfully and without a change in state or connectivity.

g. Location Objects

Each element of the ''locations'' array contains the geographic coordinates of the locations measured at the start and end of the speed test, as well as during the test (if measured).

Field	Data type	Example	Description/notes
timestamp	Datetime	2021–07–08T09:02:58–08:00	Timestamp of the time at which the location was recorded. —*Value must match valid ISO–8601 format, including seconds and timezone offset, i.e.: YYYY–MM–DD[T]hh:mm:ss±hh:mm.*
latitude	Numeric	63.069168	Unprojected (WGS–84) geographic coordinate latitude in decimal degrees of the reported location where the test was conducted. —*Value must have minimum precision of 6 decimal places.*
longitude	Numeric	−153.248195	Unprojected (WGS–84) geographic coordinate longitude in decimal degrees of the reported location where the test was conducted. —*Value must have minimum precision of 6 decimal places.*

h. Cell Objects

Each element of the ''cells'' array contains telephony information about the cell/carrier.

Field	Data type	Example	Description/notes
timestamp	Datetime	2021–07–08T09:02:42–08:00	Timestamp of the time at which the cell information was measured. —*Value must match valid ISO–8601 format including seconds and timezone offset, i.e.: YYYY–MM–DD[T]hh:mm:ss±hh:mm.*
cell_id	Numeric	32193025	Measured cell identifier. —*Value is not available on iOS and may be null for these device types.*
physical_cell_id	Integer	192	Measured Physical Cell Identity (PCI) of the cell. —*Value is not available on iOS and may be null for these device types.* —*Value is only required for 4G LTE and 5G–NR tests and must be null for 2G or 3G tests.*

Field	Data type	Example	Description/notes
cell_connection	Enumerated	1	Connection status of the cell. —*Value must be one of the following codes:* *0—Not Serving.* *1—Primary Serving.* *2—Secondary Serving.* —*Value is not available on iOS and may be null for these device types.* —*Value may be null if the device does not return a valid value or else returns a value of unknown.*
network_generation	Enumerated	4G	String representing the network generation of the cell. —*Value must be one of the following:* {*2G/3G/4G/5G/Other*}
network_subtype	Enumerated	LTE	String representing the network subtype of the cell. —*Value must be one of the following:* {*1X/EVDO/WCDMA/GSM/HSPA/HSPA+/LTE/NRSA/NRNSA*}.
rssi	Decimal	−57.2	Measured Received Signal Strength Indication (RSSI) in dBm of the cell. —*Value is not available on iOS and may be null for these device types.* —*Value is required for all network generations and subtypes.*
rxlev	Decimal	−80.2	Measured Received Signal Level in dBm of the cell. —*Value is not available on iOS and may be null for these device types.* Value is only required for tests with a network generation and subtype of 2G—GSM, and must be null for all other network generations or subtypes.
rsrp	Decimal	-92.1	Measured Reference Signal Received Power (RSRP) in dBm of the cell. —*Value is not available on iOS and may be null for these device types.* —*Value must be null for 2G or 3G tests.* —*Note: This value represents the Synchronization Signal (SS) for 5G–NR tests and the Channel-specific Reference Signal (CRS) for 4G LTE tests.*
rsrq	Decimal	−12.5	Measured Reference Signal Received Quality (RSRQ) in dB of the cell. —*Value must be null for 2G or 3G tests.* —*Note: This value represents the Synchronization Signal (SS) for 5G–NR tests and the Channel-specific Reference Signal (CRS) for 4G LTE tests.*
sinr	Decimal	21.3	Measured Signal to Interference and Noise Ratio (SINR) in dB of the cell. —*Value is not available on iOS and may be null for these device types.* —*Value may be null for 2G or 3G tests.* —*Note: This value represents the Synchronization Signal (SS) for 5G–NR tests and the Channel-specific Reference Signal (CRS) for 4G LTE tests.*
rxqual	Integer	3	Measured Received Signal Quality of the cell. —*Value is not available on iOS and may be null for these device types.* —*Value must be between* 0 and 7. —*Value is only required for tests with a network generation of 2G and network subtype of GSM, and must be null for all other network generations or network subtypes.*
ec_io	Decimal	−8.3	Measured Energy per Chip to Interference Power Ratio in dB of the cell. —*Value is not available on iOS and may be null for these device types.*

Field	Data type	Example	Description/notes
			—Value is only required for CDMA 1X, EVDO, WCDMA, HSPA, and HSPA+ network subtypes, and must be null for all other network subtypes.
rscp	Decimal	−87.2	Measured Received Signal Code Power in dBm of the cell. *—Value is not available on iOS and may be null for these device types.* *—Value is only required for WCDMA, HSPA, and HSPA+ network subtypes, and may be null for all other network subtypes.*
cqi	Integer	11	Measured Channel Quality Indicator (CQI) of the cell. *—Value is not available on iOS and may be null for these device types.* *—Value is only required for WCDMA, HSPA, HSPA+, LTE, and NR network subtypes, and may be null for all other network subtypes.*
spectrum_band	Integer	66	Spectrum band used by the cell. *—Value is not available on iOS and may be null for these device types.* *—Value may be null for 2G or 3G tests.* *—Value may be null if the device does not return a valid value or else returns a value of unknown.* *—Note: The reported band value corresponds to the Operating Bands tables as follows:* *—4G LTE: 3GPP TS 36.101 section 5.5* *—5G–NR: 3GPP TS 38.101 table 5.2–1*
spectrum_bandwidth	Numeric	15	Total amount of spectral bandwidth used by the cell in MHz. *—Value is not available on iOS and may be null for these device types.*
arfcn	Integer	66786	Absolute radio-frequency channel number, measured absolute physical RF channel number of the cell. *—Value is not available on iOS and may be null for these device types.*

Appendix B—Drive-Test Procedures for Alaska Drive-Test Model—Technical Appendix

I. Introduction

This technical appendix provides the process for Alaska Plan mobile service providers receiving more than $5 million annually in support to gather drive testing data to include with its performance plan milestone certifications. The Alaska Plan requires such testing to include ''a statistically significant number of tests in the vicinity of residences being covered'' to demonstrate that plan participants have met the commitments in the performance plans approved by the Wireless Telecommunications Bureau (Bureau).

Remote Alaska is extraordinarily sparsely populated; virtually all its county-level geographies have population densities of three or fewer people per square mile. Accordingly, testing every location for a provider's coverage would be unduly burdensome, and testing a sample of locations is required.

For the sampling required to implement the testing procedures under the Alaska Plan, the Alaska Drive-Test Model uses stratified random sampling. This sampling methodology balances between the statistical significance required by the Alaska Plan and the burden on providers to conduct tests from a sufficient number of locations.

The following sections describe the details of the testing process. These technical details serve as a guide to both the Bureau and the providers doing the testing in determining:

- Where, within the geographic boundaries of the coverage map, a provider should conduct testing;
- how many locations a provider must test;
- what speed test measurements will be accepted for staff analysis by the Bureau; and
- how Bureau staff will evaluate the test data and adjudicate whether the provider has passed or failed the testing process.

II. Sample Frame Construction

To select locations for testing, one must first construct a list (known as a ''sampling frame'' or ''frame'') of possible locations to select from. The construction of this frame is a multi-part process. First, we will create a set of ''eligible populated areas.'' Census blocks eligible for frozen-support funding would be included, and these census blocks would be merged with the populated areas of the Alaska Population-Distribution Model. Second, staff will merge the FCC Form 477 reported coverage areas (for which a provider committed to deploy and that are subject to testing) with the eligible populated areas to create a set of ''covered populated areas.'' Third, staff will overlay a grid of 1 km x 1 km squares onto the covered populated areas. Due to the fact that the Alaska Population-Distribution Model uniformly distributes population within the populated areas of a census block, the covered populated areas of a block likewise have a uniform population distribution. The total population of each grid cell is the sum of the populations of the covered populated areas contained within a given grid cell. For example, if a grid cell contains 25% of the covered populated area of a census block, that grid cell would be credited with 25% of that block's covered population. That same grid cell might also contain 100% of a second census block's covered populated area. So all of that census block's covered population would be credited to that grid cell, and the grid cell's total population will be the sum of these two populations. Lastly, any grid cell that contains fewer than 100,000 square meters of covered populated area, or 10% of the grid cell, will be excluded from the frame.[1] This

[1] For clarification, the population of grid cells with a *de minimis* populated area will be credited towards the commitments represented by the frames from which the respective grid cells were removed. For example, a grid cell that was removed

ensures that all grid cells have a reasonable testable area, reducing burden on providers. Grid cells with smaller levels of covered populated area are less likely to have areas that are publicly accessible or large enough to conduct mobile testing. Figures 1–4 below detail this process.

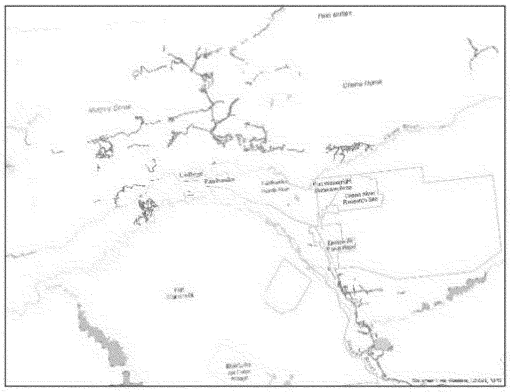

Fig. 1: Eligible Blocks and Populated Areas

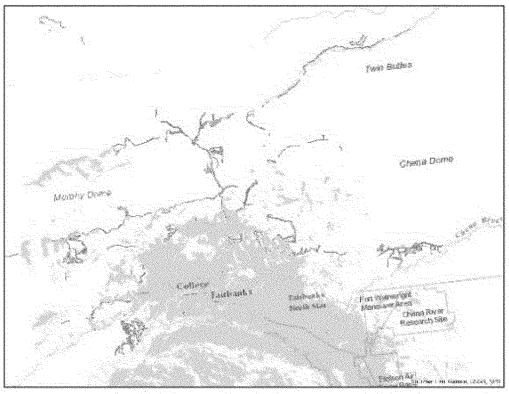

Fig. 2: Eligible Populated Areas and Coverage

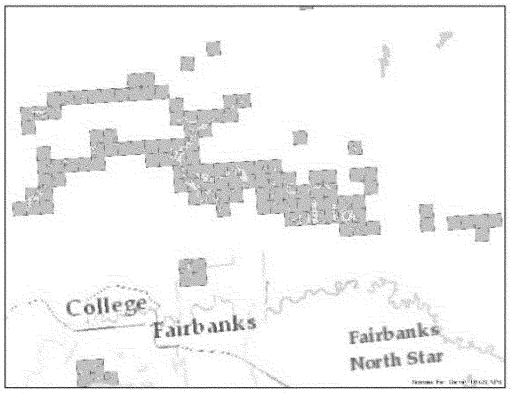

Fig. 3: Covered Populated Areas with Grid

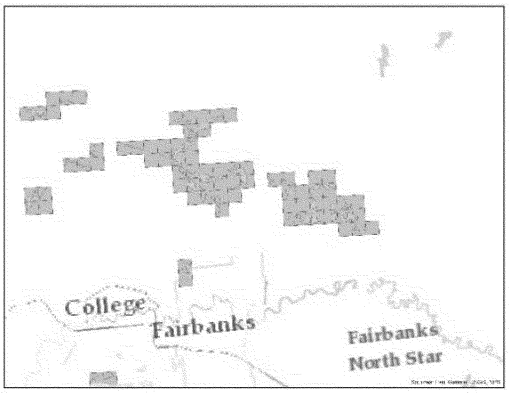

Fig 4: Grid Cells Eligible for Selection

For commitments that do not promise different speeds for different middle-mile technologies, staff will construct the frame based on the reported technology coverage from the provider's FCC Form 477 submission. For areas served by more than one technology, as reported on the FCC Form 477, staff will only include the latest generation technology in the frame for any areas covered by multiple technologies. For example, if an area is covered by both 2G and 3G, then the area will only be included in the 3G frame. As no commitments were made for 5G–NR service, any 5G–NR coverage would be included within the LTE frame.[2] Where a provider has committed to different speeds in different areas due to different middle-mile technologies, the frame would rely on additional data submitted by the provider to differentiate the covered areas of a given technology (*e.g.,* LTE) with multiple middle-mile types.

III. Frame Stratification

Frame stratification is the process of dividing a frame into subsets of similar characteristics, called strata. This methodology allows fewer grid cells to be selected for testing while producing the statistically equivalent level of accuracy as sampling the entire frame, thus reducing testing burden.

The number of strata for each frame depends on the number of grid cells in a given frame. To create the strata, the Bureau will use the cumulative square root of the frequency (CSRF) method, based on grid-level estimates of covered population. CSRF is a standard stratification method used to define the breaks between strata. It creates equal intervals not on the scale along the stratification variable (in this case, covered population) scale, but rather on the scale along the cumulated square root of the count (frequency) of grid cells belonging to equal intervals of the stratification variable. The first stratum in each frame would contain all grid cells with a population of less than one.

Based on the data staff currently have, each frame will likely contain between two and eight strata. Staff analysis has found that this stratification method produces strata of more equal sizes than other potential stratification methods (*e.g.,* based on census tracts), which reduces the number of grid cells that need to be selected for testing.

from a frame measuring fiber-based 4G LTE at 10/1 Mbps because it had a testable area of less than 100,000 square meters would have its population credited towards that provider's fiber-based 4G LTE at 10/1 Mbps commitment.

[2] If a provider's FCC Form 477 submissions show more than one level of speed for a given technology, then only the area of the submission with speeds equaling or exceeding the committed service will be included in that frame, with the rest of the area included in the frame of the lower last-mile technology. For example, if a provider has committed to LTE at 10/1 Mbps speeds, and shows in its FCC Form 477 LTE submission areas that have 10/1 Mbps LTE speeds, and other areas with 5/1 Mbps speeds, only the 10/1 Mbps areas would be included in the LTE frame, while the 5/1 Mbps areas would be instead included in the 3G frame, which could also be described as ''3G or better.'' This will prevent a provider who has begun upgrading an area's service, but that has not yet finished the upgrade, from being penalized by having it tested against a standard of a fully upgraded service area.

Further, staff will select certain grid cells with probability 1 (grid cells that are called certainties) within each stratum. This ensures that grid cells that have a high population within a given stratum are tested; this should prevent the testing results of the stratum from being skewed by outlier results from low-weighted grid cells.

IV. Sample Size Calculation and Allocation and Sample Selection

The Bureau will determine the number of grid cells that the provider has to test (that is, the sample size, *n*), based on two statistical assumptions. The first is that the variance of the desired estimate of average population served cannot exceed a specified value, *V*. The second is that the cost of drive testing is constant in every grid cell selected in the sample. Under these assumptions, a theoretical value for the sample size can be calculated as detailed below.

Let *L* denote the number of strata in the frame and let the index *h* distinguish these *L* strata. Further, denote or define the following quantities:

- Number of grid cells in the stratum $= N_h$ (thus, $N = \sum_h N_h$)
- Weight of the stratum $= W_h = N_h/N$
- Mean of X in the stratum $= \bar{X}_h = \frac{1}{N_h}\sum X_{h,i}$ where $X_{h,i}$ is the value of committed population X in the ith grid cell of stratum h
- Variance of X in the stratum $= V(X)_h = \frac{\sum (X_{h,i}-\bar{X}_h)^2}{N_h-1}$

Under our proposal, the theoretical minimum sample size is given by:

$$n = \frac{\left(\sum W_h \sqrt{V(X)_h}\right)^2}{V + (1/N)\sum W_h V(X)_h}$$

Once determined, n would be allocated among the different strata. Specifically, if n_h is the number of sample grid cells allocated to the stratum, then:

$$n_h = n\frac{W_h\sqrt{V(X)_h}}{\sum W_h\sqrt{V(X)_h}} = n\frac{N_h\sqrt{V(X)_h}}{\sum N_h\sqrt{V(X)_h}}$$

This method of apportioning the sample among the various strata is called Neyman allocation. This method will assign a greater number of sampled grid cells to strata with higher populations rather than lower populations. Note that $n = \sum n_h$.

Guided by the allocation scheme from the previous section, staff will use geographic information systems (GIS) tools or statistical software to randomly select grid cells in each stratum. Staff will then conduct a four-step optimization analysis, as follows.

First, we will draw a sample according to the adopted stratified random design. If there are multiple frames for a provider, we will sample independently from each frame. These multiple samples will be subjected to the rest of the optimization steps together as one set. We will then repeat this process at least one hundred times, each time yielding a sample, or group of samples, that are valid under the design.

Second, from this set of valid samples, we will identify the sample or samples with grid cells that contain the least number of incorporated and census-designated places.

Third, if there are multiple samples identified in the previous step, we will then determine which of the remaining samples contains the fewest number of selected grids that are located outside of incorporated and census-designated places.

Fourth, if there remains more than one sample identified in the previous step, we will randomly pick one.

The optimal sample so identified likely will result in a significant reduction in the number of communities that have to be visited for the required testing. The provider subject to testing will be notified of the sample grid cells in which it will be required to conduct on-the-ground speed tests.[3]

V. Drive-Testing Data Collection

Within each selected grid cell, a carrier must conduct a minimum of 20 tests, no less than 50% of which are to be conducted while in motion from a vehicle. This is the minimum number of tests to support the use of the binomial distribution to approximate the normal distribution that is needed in calculating the gap in coverage based on a one-sided 90% confidence interval, as discussed later in Section VII. To be considered valid, each test must be conducted between the hours of 6:00 a.m. and 10 p.m. local time, within the selected grid cell, and report all relevant parameters defined in Appendix A. Each component of a test (*i.e.,* download and upload speeds) should have a duration between 5 and 30 seconds. Mobile tests are considered to be located within the grid cell containing the starting location, as a tester has full control over the starting location of a test but may not always be able to control the ending location of a test. Testers should, however, attempt to conduct a mobile test within a single grid cell as much as is reasonably and

[3] If a grid cell that is in multiple frames is randomly selected for testing more than once, the provider only needs to conduct one set of tests for that grid cell. The results can be used for all frames for which the grid cell was selected.

safely possible. A mobile test should initiate when moving away from the location of a stationary test after having reached the speed of the surrounding traffic, or a safe and reasonable operating speed in the event no traffic is present.

VI. Statistical Analysis of Testing Results

Upon receipt of drive-testing submissions, the Bureau will perform a statistical analysis of the data to estimate the desired total population covered. Because the sample is selected using stratified random sampling, estimation techniques appropriate for this particular sampling method must be used.

Stratified random sampling requires an aggregate measurement from a sampled grid cell that will be combined with measurements from the other sampled grid cells to calculate stratum-level estimates of total covered population. These estimates will, in turn, be combined to produce an overall estimate of covered population. Drive tests conducted in a sample grid cell will be aggregated based on the following rule:

Let p be the percentage of drive tests that meet or exceed the applicable minimum. If p is at least 85%, then the full population of the sample grid cell will be deemed as covered; otherwise, 0% will be deemed as covered.

To calculate the stratum-level estimates and the overall estimate of the covered population, the Bureau will use the estimation method appropriate for stratified random sampling, described next.

Let $x_{h,i}$ be the (deemed) covered population in the ith grid cell of stratum h, where i = 1, ‰0Û_, n_h. Based on the rule above, $x_{h,i} = X_{h,i}$ if p 糧0.85, and $x_{h,i} = 0$ if $p < 0.85$. The stratum sample mean covered population, x_h, is calculated as $x_h = $ ¥$x_{h,i}/n_h$; the stratum sample total covered population is $N_h x_h$; and the stratum sample variance, s_h^2, is calculated as $s_h^2 = \frac{(\text{¥}x_{h,i}-x_h)^2}{n_h-1}$.

Combining these stratum-level estimates, we arrive at the overall covered population mean, calculated as:

$$x = \frac{N_h x_h}{N} = \text{¥} W_h x_h$$

with variance:

$$V(x) = \frac{1}{N^2} \text{¥} N_h (N_h - n_h) \frac{s_h^2}{n_h}.$$

Finally, the overall covered population total, $\hat{X}$, is estimated as $\hat{X} = N^{\overline{x}}$.

VII. Adjudication of the Outcome of the Testing Process

Because the estimate of the total covered population comes from a sample, direct comparison of $\hat{X}$ against the committed covered population is not appropriate. Instead, staff will construct a confidence interval that takes into account the variability arising from the estimate $\hat{X}$ and use this confidence interval to adjudicate the outcome of the testing process.

Because the Alaska Plan calls for a tiered approach in levying penalties for providers failing the testing process, the Bureau will use a one-sided 90% confidence interval for $\hat{X}$ to quantify the gap in coverage. In particular, the Bureau will use the upper limit of this confidence interval, which is calculated as $\hat{X} + 1.28n\sqrt{V(x)}$. This will be added to the population of grid cells with a *de minimis* populated area that had been previously removed from the tested frame.

The compliance gap is then calculated as:

Gap in Coverage = Total Population Coverage Commitment − (1.28$N\sqrt{V(x)}$ + De Minimis Grid Cells).

If the gap in coverage is no more than 5% of the total population of a given commitment, no penalties will apply. Otherwise, penalties will apply according to the tiers adopted by the Commission.

Additionally, it is possible to have a negative gap in coverage if the upper limit of the confidence interval is greater than the total committed population. If a provider has committed to multiple tiers of technology (*i.e.,* 2G, 3G, and 4G LTE), then any excess coverage, as defined by a negative gap in coverage, can be applied to the next lowest tier of technology. For example, if a provider has committed to cover 25,000 people with 4G LTE and the upper limit of the confidence interval shows adequate coverage for 30,000 people, then the remaining 5,000 coverage can be applied to its 3G commitment. This process is iterative, so any further excess coverage can be applied to its 2G commitment. Accordingly, the formula above would be re-written as:

Gap in Coverage = Total Population Coverage Commitment − $\hat{X}$ + (1.28$N\sqrt{V(x)}$ + De Minimis Grid Cells + Excess Coverage from Higher Technology).

This methodology therefore will not punish carriers for improving coverage beyond what they committed.

Appendix C—Current Performance Plans

I. Copper Valley Wireless

Copper Valley Wireless, LLC

			Note 1				Note 2							
Middle Mile	Population 2010 Census	Spectrum Codes (477 Code)	Population Served 12/31/15	% Base Population Served 12/31/15	Technology Of Transmission (477 Code)	Minimum Expected Upload/ Download Speeds	5 Year Base Population Served	5 Year % Total Population Served	Technology Of Transmission (477 Code)	Minimum Expected Upload/ Download Speeds	10 Year Total Base Population Served	10 Year % Population Served	Technology Of Transmission (477 Code)	Minimum Expected Upload/ Download Speeds
Satellite	NA													
Microwave	2,426	90												
			2,377	98%	83	10MB/3MB	2,377	98%	83	10MB/3MB	2,377	98%	83	10MB/3MB
Fiber	6,708	90	202	3%	85	1MB/.8MB								
			6,171	92%	83	10MB/3MB	6,373	95%	83	10MB/3MB	6,373	95%	83	10MB/3MB

Note 1: Population per 2010 Census in service area. Excludes population served by AT&T and/or Verizon at 4G LTE using their infrastructure.
Note 2: Percentage of population served at benchmark speeds as of 12/31/15.
Note 3: Year 1 is 2017

II. GCI

GCI Alaska Plan PerformanceCommitments - Updated July 1, 2020

			Note 1	Note 2	Note 3		Note 4						
Middle Mile	Technology Of Transmission (477 Code)	Population 2010 Census	Population Served 12/31/15	% Base Population Served 12/31/15	5 Year Base Population Served	5 Year % Total Population Served	10 Year Total Base Population Served	10 Year % Population Served	Increase/ (Decrease) by Year 10	10 Year Total Population Served - Revised 7/1/20	10 Year % Population Served - Revised 7/1/20	Minimum Expected Download/ Upload Speeds at Edge	Spectrum Codes (477 Code)
Fiber	83 (LTE)	64,158	13,455	21%	32,079	50%	69,601	100%	-	69,601	100%	10/1 Mbps	90, 91, 93, 94
	80, 81, 82 (3G)		43,882	68%	25,258	39%	-	0%	-	-	0%	.2/.05 Mbps	90, 91, 93, 94
	85, 86 (Voice/2G)		6,821	11%	6,821	11%	-	0%	-	-	0%	<.2 Mbps	90, 91, 93, 94
Fiber Total			64,158	100%	64,158	100%	69,601	100%		69,601	100%		
Microwave	83 (LTE)	50,717	125	0%	125	0%	42,095	83%	402	42,497	83%	2/.8 Mbps	90, 91, 93, 94
	80, 81, 82 (3G)		29,764	59%	41,970	83%	8,622	17%	-	8,622	17%	.2/.05 Mbps	90, 91, 93, 94
	85, 86 (Voice/2G)		20,828	41%	8,622	17%	-	0%	-	-	0%	<.2 Mbps	90, 91, 93, 94
Microwave Total			50,717	100%	50,717	100%	50,717	100%		51,119	100%		
Satellite	83 (LTE)	24,482	-	0%	12,363	50%	8,150	43%	-	8,150	44%	1/.256 Mbps	90, 91, 93, 94
	80, 81, 82 (3G)		-	0%	-	0%	-	0%	-	-	0%	.2/.05 Mbps	90, 91, 93, 94
	85, 86 (Voice/2G)		24,482	100%	12,119	50%	10,889	57%	(402)	10,487	56%	<.2 Mbps	90, 91, 93, 94
Satellite Total			24,482	100%	24,482	100%	19,039	100%		18,637	100%		
Total	83 (LTE)		13,580	10%	44,567	32%	119,846	86%	402	120,248	86%		
Total	80, 81, 82 (3G)		73,646	53%	67,228	48%	8,622	6%		8,622	6%		
Total	85, 86 (Voice/2G)		52,131	37%	27,562	20%	10,889	8%	(402)	10,487	8%		
Grand Total		**139,357**	139,357	100%	**139,357**	100%	**139,357**	100%		**139,357**	100%		

Note 1: Population per 2010 Census in service area. Excludes population served by AT&T and/or Verizon at 4G LTE using their infrastructure.
Note 2: Percentage of population served at benchmark speeds as of 12/31/15.
Note 3: Year 1 is 2017.
Note 4: 10 year figures reflect commitments as revised on July 1, 2019.

[FR Doc. 2022–10541 Filed 5–17–22; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 87, No. 96
Wednesday, May 18, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2021–0054; EPA–R05–OAR–2022–0254; FRL–9686–01–R5]

Air Plan Approval; Indiana; Redesignation of the Indiana Portion of the Louisville, Indiana-Kentucky Area to Attainment of the 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Indiana portion of the Louisville, Indiana-Kentucky area (Area) is attaining the 2015 primary and secondary ozone National Ambient Air Quality Standards (NAAQS), and to act in accordance with a request from the Indiana Department of Environmental Management (IDEM) to redesignate the Indiana portion of the area to attainment for the 2015 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Area includes Clark and Floyd Counties in Indiana and Bullitt, Jefferson, and Oldham Counties in Kentucky. IDEM submitted this request on February 21, 2022. EPA is proposing to approve, as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2035 in the Indiana portion of the Louisville area. EPA finds adequate and is proposing to approve Indiana's 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (budgets) for the Indiana portion of the Louisville area and is initiating the adequacy review process for these budgets. Finally, EPA is also proposing to approve portions of a separate January 21, 2021 submittal from IDEM as meeting the applicable requirements for a base year emissions inventory and emissions statement program.

DATES: Comments must be received on or before June 17, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0054, or EPA–R05–OAR–2022–0254 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)-353–7645, *lee.andrew.c@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Indiana portion of the Louisville nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021, and that the Indiana portion of the Louisville area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the designation of the Indiana portion of the Louisville area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Indiana SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Indiana portion of the Louisville area in attainment of the 2015 ozone NAAQS through 2035. EPA is proposing to approve the newly established 2035 budgets for the Indiana portion of the Louisville area and is initiating the adequacy process for these budgets. Finally, EPA is proposing to approve portions of Indiana's January 21, 2021, submittal because they satisfy the applicable CAA requirements for a base year emissions inventory and emissions statement program for the Indiana portion of the Louisville area.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Louisville area was designated as a Marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018 (83 FR 25776) (effective August 3, 2018).

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that:

(1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in policy memoranda.

IV. What is EPA's analysis of Indiana's redesignation request?

A. Has the Louisville area attained the 2015 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.19 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. The 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all the ozone monitoring sites in the area. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,[1] on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Louisville area for the 2019–2021 period. These data have been quality assured, are recorded in the AQS, and were certified in advance of EPA's publication of this proposal. These data demonstrate that the Louisville area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE LOUISVILLE AREA

County	Monitor	2019 4th high (ppm)	2020 4th high (ppm)	2021 4th high (ppm)	2019–2021 Average (ppm)
Clark, IN	18–019–0008	0.064	0.062	0.063	0.063
Floyd, IN	18–043–1004	0.063	0.066	0.064	0.064
Bullitt, KY	21–029–0006	0.063	0.065	0.065	0.064
Jefferson, KY	21–111–0051	0.065	0.063	0.067	0.065
	21–111–0067	0.068	0.071	0.069	0.069
	21–111–0080	0.064	0.068	0.073	0.068
Oldham	26–163–0001	0.065	0.061	0.065	0.063

The Louisville area's 3-year ozone design value for 2019–2021 is 0.069 ppm,[2] which meets the 2015 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the Louisville area is attaining the 2015 ozone NAAQS.

EPA will not take final action to determine that the Louisville area is attaining the NAAQS or to approve the redesignation of this area if the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation. As discussed in section IV.D.3. below, IDEM has committed to continue monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

[2] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

B. Has Indiana met all applicable requirements of section 110 and part D of the CAA for the Indiana portion of the Louisville area, and does the Indiana portion of the Louisville have a fully approved SIP for the area under section 110(k) of the CAA?

For redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA proposes to find that Indiana has met all applicable SIP requirements for purposes of redesignation under section 119 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). Additionally, with the exception of the base year emissions inventory requirement of section 182(a)(1) of the CAA and the emissions statement requirement of section 182(a)(3)(B) of the CAA, EPA proposes to find that Indiana has a fully approved SIP under section 110(k) of the CAA. As discussed in sections VI. and VII. below, EPA is proposing to approve Indiana's base year emissions inventory and emissions statement program as meeting the requirements of sections 182(a)(1) and 182(a)(3), respectively, for the 2015 ozone NAAQS. Upon final approval of these SIP elements, all applicable requirements of the Indiana SIP for the area will have been fully approved under section 110(k) of the CAA. In making these proposed determinations, EPA ascertained which requirements are applicable for purposes of redesignation, and whether the required

Indiana SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to these applicable requirements of the CAA.

The September 4, 1992, memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' describes EPA's interpretation of which requirements are ''applicable'' for purposes of redesignation under section 107(d)(3)(E) of the CAA. Under this interpretation, a requirement is not ''applicable'' unless it was due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, memorandum from Michael H. Shapiro, entitled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation.[3] *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

[3] EPA is, in a separate action, proposing to find that the Louisville area failed to attain the 2015 ozone NAAQS by its attainment date. If that determination were to be finalized, the area would be reclassified to Moderate by operation of law. However, because of EPA's interpretation and the date by which Indiana submitted its request, those Moderate area requirements are not considered applicable requirements for purposes of redesignating the Louisville area. Specifically, at the time Indiana submitted its request, EPA had not yet determined that the area failed to attain and had not yet reclassified the area. Per CAA section 182(i) and consistent with CAA section 179(d), EPA typically adjusts the deadlines for SIP submissions that are required for newly reclassified areas. Therefore, even if EPA were to finalize today the determination that the area failed to attain and reclassify the area, the deadline for the requirements associated with the reclassification would be set at some point in the future. Indiana submitted its request to redesignate well in advance of any hypothetical due date associated with Moderate area requirements.

1. Indiana Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Indiana Portion of the Louisville Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* NO_X SIP call, the Clean Air Interstate Rule (CAIR), and the Cross State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2015 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Indiana's SIP and propose to find that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 2015 ozone NAAQS nonattainment status of the Louisville area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the state's ozone redesignation request.

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Louisville area was classified as Marginal under subpart 2 for the 2015 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (Marginal nonattainment

area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

As provided in subpart 2, for Marginal ozone nonattainment areas such as the Louisville area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Indiana's NSR program into the SIP on October 7, 1994 (59 FR 51108), with revisions subsequently approved into the SIP on July 8, 2011 (76 FR 40242). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Indiana's PSD program will become effective in the Indiana portion of the Louisville area upon redesignation to attainment. EPA approved Indiana's PSD program on May 20, 2004 (69 FR 29071).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Indiana SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires that federally supported or funded projects conform to the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [4] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Indiana's general conformity rules were approved into Section 176(c) of the CAA on January 14, 1998 (63 FR 2146).

iii. Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of NO_X and VOC emitted within the boundaries of the ozone nonattainment area within two years of designation. On January 21, 2021, Indiana submitted emissions inventories for the Indiana portion of the Louisville area for the 2017 base year. As described in section VI. below, EPA is proposing to approve Indiana's base year emissions inventory as meeting the requirements of section 182(a)(1) for the 2015 ozone NAAQS.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Indiana portion of the Louisville area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and, in any case, Indiana complied with this requirement for the Indiana portion of the Louisville area under the prior 1-hour ozone NAAQS. *See* 57 FR 8082 (March 6, 1992).

Section 182(a)(2)(B) requires each state with a Marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone NAAQS and the consideration of Indiana's redesignation request for this standard, the Louisville area is not subject to the section 182(a)(2)(B) requirement because the Louisville area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments and because Indiana complied with this requirement for the Louisville area under the prior 1-hour ozone NAAQS.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Indiana currently has a fully-approved part D NSR program in place. EPA approved Indiana's NSR program into the SIP on October 7, 1994 (59 FR 51108), with revisions subsequently approved into the SIP on July 8, 2011 (76 FR 40242). EPA approved Indiana's PSD program on May 20, 2004 (69 FR 29071). The state's PSD program will become effective in the Indiana portion of the Louisville area upon redesignation of the area to attainment.

Section 182(a)(3)(A) requires states to submit periodic emission inventories and section 182(a)(3)(B) requires states

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of motor vehicle emission budgets, such as control strategy SIPs and maintenance plans.

to submit a revision to the SIP to require the owners or operators of stationary sources to annually submit emissions statements documenting actual NO_X and VOC emissions. As discussed below in section IV.D.4. of this proposed rule, Indiana will continue to update its emissions inventory at least once every three years. With regard to stationary source emissions statements, EPA approved Indiana's emissions statement program on June 10, 1994 (59 FR 29953). On January 21, 2021, Indiana submitted a separate request to strengthen its SIP-approved emissions statement program by adding, removing, and updating certain statues and reporting forms. As described in section VII. below, EPA is proposing to approve portions of Indiana's emissions statement submittal as meeting the requirements of section 182(a)(3)(B) for the 2015 ozone NAAQS.

Upon approval of Indiana's emissions inventory and emissions statements rules, the Indiana portion of the Louisville area will have satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Indiana Portion of the Louisville Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

At various times, Indiana has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, if EPA finalizes approval of Indiana's section 182(a)(1) base year inventory requirements and section 182(a)(3)(B) emission statement requirements, EPA will have fully approved the Indiana SIP for the Indiana portion of the Louisville area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426). Additional measures may also be approved in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Louisville area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA proposes to determine that Indiana has demonstrated that that the observed ozone air quality improvement in the Louisville area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the State has calculated the change in emissions between 2017 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to several regulatory control measures that the Louisville area and upwind areas have implemented in recent years. In addition, Indiana provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA proposes to find that Indiana has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

CAIR/CSAPR. Under the ''good neighbor provision'' of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Indiana, to prohibit emissions consistent with annual and ozone season NO_X budgets and annual sulfur dioxide (SO_2) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions, a precursor of both ozone and $PM_{2.5}$, as well as transported SO_2 emissions, another precursor of $PM_{2.5}$. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina* v. *EPA,* 531 F.3d 896, *modified,* 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS.[5] Through Federal Implementation Plans, CSAPR required electric generating units (EGUs) in eastern states, including Indiana, to meet annual and ozone season NO_X budgets and annual SO_2 budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_X trading program for EGUs in eastern states, including Indiana, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update was estimated to result in a 20% reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. On April 30, 2021, EPA published the Revised CSAPR Update, which fully resolved the obligations of eastern states, including Indiana, under the good neighbor provision for the 2008 ozone NAAQS (82 FR 23054). The Revised CSAPR Update was estimated to reduce ozone season NO_X emissions from EGUs by 17,000 tons beginning in 2021, compared to emissions without the rule. The reduction in NO_X emissions from the implementation of CAIR and then CSAPR occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

b. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards.

[5] In a December 27, 2011 rulemaking, EPA included Indiana in the ozone season NO_X program, addressing the 1997 ozone NAAQS (76 FR 80760).

On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule is being phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for non-methane organic gases (NMOG) and NO_X, presented as NMOG+NO_X, and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction in fleet average NMOG+NO_X and a 70% reduction in per-vehicle particulate matter (PM) standards, relative to the fleet average at the time of phase-in. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average NMOG+NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from previous standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm starting in January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Indiana portion of the Louisville area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. EPA estimated that by 2015 NO_X and VOC emissions would decrease nationally by 1,260,000 tons and 54,000 tons, respectively, and that by 2030 NO_X and VOC emissions will decrease nationally by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Indiana portion of the Louisville area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for the 2008 through 2015 model years based on engine size. The sulfur limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimates that now fully implemented, compliance with this rule will cut NO_X emissions from these non-road diesel engines by approximately 90%. As projected by these estimates and demonstrated in the non-road emission modeling for the Indiana portion of the Louisville area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model years 2004 through 2012. Now fully implemented, EPA estimates an overall 72% reduction in national VOC emissions from these engines and an 80% reduction in national NO_X emissions. As projected by these estimates and demonstrated in the non-road emission modeling for the Indiana portion of the Louisville area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards applied beginning in 2011 and are expected to result in a 15 to 25% reduction in NO_X emissions from these engines. Final Tier 3 emission standards applied beginning in 2016 and are expected to result in approximately an 80% reduction in NO_X from these engines. As projected by these estimates and demonstrated in the non-road emission modeling for the Indiana portion of the Louisville area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

Indiana is using a 2017 emissions inventory as the base year because EPA's 2017 National Emissions Inventory (NEI) is the most recently available triennial emissions inventory preceding the nonattainment designations in April 2018. Indiana is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate attainment.

Indiana has provided inventories for point, nonpoint, on-road, and nonroad sources. The inventory for point sources includes facilities that report their emissions directly to IDEM, as well as sources such as airports and rail yards. Nonpoint sources, sometimes called area sources, include emissions from sources that are more ubiquitous, such as consumer products or architectural coatings. On-road sources are vehicles that are primarily used on public roadways, such as cars, trucks, and motorcycles. Nonroad sources include engine-based emissions that do not occur on roads, such as trains or boats.

For its point, nonpoint, and nonroad emissions inventories, Indiana used EPA's 2017 NEI and EPA's 2017 Emissions Modeling platform as its primary sources. To derive inventories for 2019, IDEM interpolated between 2016 and 2023, 2026, and 2032 data from EPA's 2016v2 modeling platform. The 2016v2 modeling platform and 2017 NEI have been quality-assured, and documentation regarding these datasets and their methods are available on EPA's website.[6] Point source, area source, and non-road emissions were compiled using data from EPA's Emissions Modeling Clearinghouse website for the entire Louisville nonattainment area.

For its on-road emissions inventory, Indiana submitted an analysis by Kentuckiana Regional Planning Commission and Development Agency (KIPDA) in conjunction with the Louisville Air Pollution Control District (APCD). This analysis used EPA's MOVES3.0.2 model to generate summer day on-road emissions for 2015 and 2020 which was interpolated to arrive at 2017 NO_X and VOC tons per summer day. KIPDA's and APCD's analysis relied on local travel inputs including demographic data, travel demand

[6] *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-technicalsupport-document-tsd* and *https://www.epa.gov/air-emissions-modeling/2016-version-2-technical-support-document.*

forecasting, road types, Vehicle Miles of Travel (VMT), Vehicle Hours of Travel, vehicle population, and vehicle age, as well as meteorological data. In Appendix C of its submittal, Indiana has included a detailed narrative of KIPDA's methods.

To obtain the inventories, IDEM summed the annual totals of NO_X and VOC emissions from each emission category. Then, IDEM calculated a conversion factor to convert the annual totals to a value of tons per ozone season day. This conversion factor was generated by taking the June–August category emissions and dividing them by the annual category emissions. IDEM selected June–August as the standard ozone season months, due to an analysis showing that those months had the most days with high ozone values in recent years.

Using the inventories described above, Indiana's submittal documents changes in NO_X and VOC emissions from 2017 to 2019 for the Indiana portion of the Louisville area. Emissions data are shown in Table 2. Data are expressed in terms of tons per ozone season day.

TABLE 2—NO_X AND VOC EMISSIONS IN THE INDIANA AND KENTUCKY PORTIONS OF THE LOUISVILLE AREA FOR THE 2017 NONATTAINMENT YEAR AND 2019 ATTAINMENT YEAR

[Tons per summer day]

	NO_X			VOC		
	2017	2019	Net change (2017–2019)	2017	2019	Net change (2017–2019)
Indiana						
Point	2.70	4.18	1.48	2.15	0.20	−1.95
Nonpoint	2.05	0.42	−1.63	11.21	8.33	−2.88
On-road	11.03	7.73	−3.30	4.41	3.37	−1.04
Nonroad	1.92	2.76	0.84	1.14	1.43	−0.29
Total	17.70	15.09	−2.61	18.91	13.33	−5.58
Kentucky						
Point	35.78	34.04	−1.74	30.92	33.45	2.53
Nonpoint	7.21	6.77	−0.44	40.14	36.76	−3.38
On-road	25.60	25.31	−0.29	9.29	10.28	0.99
Nonroad	3.46	3.38	−0.08	4.37	4.36	−0.01
Total	72.05	69.50	−2.55	84.72	84.85	0.13
Louisville, IN–KY 2015 Ozone Area						
Point	38.48	38.22	−0.26	33.07	33.65	0.58
Nonpoint	9.26	7.19	−2.07	51.35	45.09	−6.26
On-road	36.63	33.04	−3.59	13.70	13.65	−0.05
Nonroad	5.38	6.14	0.76	5.51	5.79	0.28
Total	89.75	84.59	−5.16	103.63	98.18	−5.45

As shown in Table 2, NO_X and VOC emissions in the Indiana portion of the Louisville area declined by 2.61 tons per ozone season day and 5.58 tons per ozone season day, respectively, between 2017 and 2019. NO_X and VOC emissions in the entire Louisville area declined by 5.16 and 5.45 tons per ozone season day, respectively, between 2017 and 2019.

3. Meteorology

To further support IDEM's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not unusually favorable meteorology, an analysis was performed by the Lake Michigan Air Directors Consortium (LADCO). A classification and regression tree (CART) analysis was conducted with 2005 through 2020 data from Louisville-area ozone monitors. The goal of the analysis was to determine the meteorological and air quality conditions associated with ozone episodes, and construct trends for the days identified as sharing similar meteorological conditions.

Regression trees were developed for the monitors to classify each summer day by its ozone concentration and associated meteorological conditions. By grouping days with similar meteorology, the influence of meteorological variability on the underlying trend in ozone concentrations is partially removed and the remaining trend is presumed to be due to trends in precursor emissions or other non-meteorological influences. The CART analysis showed that, removing the impact of meteorology, the resulting trends in ozone concentrations declined over the period examined, and supported the conclusion that the improvement in air quality was not due to unusually favorable meteorology.

D. Does Indiana have a fully approvable ozone maintenance plan for the Indiana portion of the Louisville area?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue

for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Indiana portion of the Louisville area to attainment for the 2015 ozone NAAQS, Indiana submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Indiana's ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Indiana SIP.

1. Attainment Inventory

EPA is proposing to determine that the Indiana portion of the Louisville area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2019–2021. Indiana selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Indiana portion of the Louisville area that are sufficient to attain the 2015 ozone NAAQS. The derivation of the attainment year emissions is discussed above in section IV.C.2. of this proposed rule. The emissions for the 2019 attainment year, by source category, are summarized in Table 2 above.

2. Has the state demonstrated maintenance of the ozone standard in the Indiana portion of the Louisville area?

Indiana has demonstrated maintenance of the 2015 ozone NAAQS through 2035 by projecting that current and future emissions of VOC and NO_X for the Indiana portion of the Louisville area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Indiana is using emissions inventories for the years 2030 and 2035 to demonstrate maintenance. 2035 was selected because it is more than 10 years after the expected effective date of the redesignation to attainment, and 2030 was selected to demonstrate that emissions are not expected to spike in the interim between the 2019 attainment year and the 2035 final maintenance year.

To develop emissions inventories for the years 2030 and 2035, Indiana used a methodology consistent with the methods used to develop its inventories for the years 2017 and 2019. This methodology is discussed above in section IV.C.2. of this proposed rule.

For its point, nonpoint, and nonroad emissions inventories, Indiana again used EPA's 2016v2 modeling platform. To derive inventories for 2030, IDEM interpolated between 2023 and 2026 and 2032 data from the 2016v2 modeling platform. To derive inventories for 2035, IDEM extrapolated forward from the 2016v2 modeling platform data using data points from 2016, 2023, 2026, and 2032 years.

For its on-road emissions inventory, Indiana again relied upon the KIPDA analysis, which used EPA's MOVES3.0.2 model to generate summer day on-road emissions for all years. KIPDA adjusted its analysis to use inputs and assumptions appropriate for the future years 2030 and 2035. In Appendix C of its submittal, Indiana has included a detailed narrative of KIPDA's methods.

Emissions data for the 2017 nonattainment year, 2019 attainment year, 2030 interim year, and 2035 maintenance year are shown in Tables 3 and 4 below. Data are expressed in terms of tons per ozone season day.

TABLE 3—NO_X EMISSIONS IN THE LOUISVILLE AREA FOR THE 2017 NONATTAINMENT YEAR, 2019 ATTAINMENT YEAR, 2030 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per summer day]

	2017	2019	2030	2035	Net change (2019–2035)
Indiana					
Point	2.70	4.18	2.36	2.50	−1.68
Nonpoint	2.05	0.42	0.42	0.42	0
Nonroad	1.92	2.76	1.80	1.25	−1.51
On-road	11.03	7.73	4.31	4.07	−3.66
Total	17.70	15.09	8.89	8.24	−6.85
Kentucky					
Point	35.78	34.04	24.39	21.24	−12.80
Nonpoint	7.21	6.77	5.84	5.41	−1.36
Nonroad	3.46	3.38	2.91	2.69	−0.69
On-road	25.60	25.31	11.66	10.87	−14.44
Total	72.05	69.50	44.80	40.21	−29.29
Louisville, IN–KY 2015 Ozone Area					
Point	38.48	38.22	26.75	23.74	−14.48
Nonpoint	9.26	7.19	6.26	5.83	−1.36
On-road	36.63	33.04	15.97	14.94	−18.10

TABLE 3—NO_X EMISSIONS IN THE LOUISVILLE AREA FOR THE 2017 NONATTAINMENT YEAR, 2019 ATTAINMENT YEAR, 2030 INTERIM YEAR, AND 2035 MAINTENANCE YEAR—Continued

[Tons per summer day]

	2017	2019	2030	2035	Net change (2019–2035)
Nonroad	5.38	6.14	4.71	3.94	−2.20
Total	89.75	84.59	56.69	48.45	−36.14

TABLE 4—VOC EMISSIONS IN THE LOUISVILLE AREA FOR THE 2017 NONATTAINMENT YEAR, 2019 ATTAINMENT YEAR, 2030 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

	2017	2019	2030	2035	Net change (2019–2035)
Indiana					
Point	2.15	0.20	0.21	0.21	0.01
Nonpoint	12.21	8.33	8.55	8.65	0.32
Nonroad	1.14	1.43	1.31	1.22	−0.21
On-road	4.41	3.37	1.41	1.24	−2.13
Total	18.91	13.33	11.48	11.32	−2.01
Kentucky					
Point	30.92	33.45	24.52	21.61	−11.84
Nonpoint	40.14	36.76	31.48	29.08	−7.68
On-road	9.29	10.28	4.04	3.55	−6.73
Nonroad	4.37	4.36	4.31	4.28	−0.08
Total	84.72	84.85	64.35	58.52	−26.33
Louisville, IN-KY 2015 Ozone Area					
Point	33.07	33.65	24.73	21.82	−11.83
Nonpoint	51.35	45.09	40.03	37.73	−7.36
On-road	13.70	13.65	5.45	4.79	−8.86
Nonroad	5.51	5.79	5.62	5.50	−0.29
Total	103.63	98.18	75.83	69.84	−28.34

As shown in Tables 3 and 4, NO_X and VOC emissions in the Indiana portion of the Louisville area are projected to decrease by 6.85 tons per ozone season day and 2.01 tons per ozone season day, respectively, between the 2019 attainment year and 2035 maintenance year. NO_X and VOC emissions for the entire Louisville area are projected to decreased by 36.14 and 28.34 tons per ozone season day, respectively, between the 2019 attainment year and the 2035 maintenance year. Indiana's maintenance demonstration for the Indiana portion of the Louisville area shows maintenance of the 2015 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2019 emission levels when considering both future source growth and implementation of future controls.

In addition, EPA's 2016v2 modeling platform includes updated air quality modeling of the contiguous United States, projecting ozone concentrations at all air quality monitors in 2023, 2026, and 2032.[7] That modeling incorporates the most recent updates to emissions inventories, including on-the-books emissions reductions, and meteorology. This modeling indicates that EPA does not project the Louisville area to be in nonattainment of the 2015 ozone NAAQS, nor does EPA expect the area to struggle with maintenance, in those modeled future years. We propose to find that EPA's ozone transport air quality modeling further supports Indiana's demonstration that the Louisville area will continue to maintain the 2015 ozone NAAQS.

3. Continued Air Quality Monitoring

Indiana has committed to continue to operate its ozone monitors in the Indiana portion of the Louisville area for the duration of the maintenance period. Indiana remains obligated to meet monitoring requirements, to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of Continued Attainment

Indiana has confirmed that it has the legal authority to enforce and implement the requirements of its SIP. Indiana has further committed that it has the authority to implement the requested SIP revision, which would include the maintenance plan for the Indiana portion of the Louisville area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of

[7] *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Indiana will continue to operate the ozone monitors located in the Indiana portion of the Louisville area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by EPA.

In addition, to track future levels of emissions, Indiana will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Indiana was compiled for 2017. Point source facilities covered by Indiana's emission statement program, described below in section VII., will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Indiana portion of the Louisville area?

Section 175A of the CAA requires that the state adopt a maintenance plan as a SIP revision that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan for the Indiana portion of the Louisville area to address possible future ozone air quality problems. The contingency plan adopted by Indiana has two levels of response, a warning level response and an action level response.

In Indiana's plan, a warning level response shall be prompted whenever an annual (1-year) 4th high monitored value of 0.074 ppm or greater occurs in a single ozone season or a two-year average 4th high monitored value of 0.071 ppm or greater occurs within the maintenance area. A warning level response will require Indiana to conduct a study. The study would assess whether the ozone value indicates a trend toward a higher ozone value and whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend, taking into account ease and timing of implementation. Any implementation of necessary controls in response to a warning level response trigger will occur within 12 months of the conclusion of the ozone season.

In Indiana's plan, an action level response will be triggered if a three-year design value exceeds the level of the 2015 ozone NAAQS (0.070 ppm). When an action level response is triggered and not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, Indiana will determine what additional control measures are needed to ensure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Indiana may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Indiana included the following list of potential contingency measures in its maintenance plan (although Indiana is not limited to the measures on this list):

1. A vehicle/maintenance program
2. Asphalt paving (lower VOC formation)
3. Diesel exhaust retrofits
4. Traffic flow improvements
5. Idle reduction programs
6. Portable fuel container regulation (statewide)
7. Park and ride facilities
8. Rideshare/carpool program
9. VOC cap/trade program for major stationary sources
10. NO_X RACT

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that Indiana's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Indiana has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Indiana portion of the Louisville area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Indiana for the Louisville area meets the requirements of section 175A of the CAA, and EPA proposes to approve it as a revision to the Indiana SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2015 ozone standard in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include budgets for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X) to address pollution from on-road transportation sources. The budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, budgets for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt budgets for other years as well. The budgets serve as a ceiling on emissions from an area's planned transportation system. The budgets concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the budgets in the SIP and how to revise the budgets, if needed, subsequent to initially establishing the budgets in the SIP.

As discussed earlier, Indiana's maintenance plan includes NO_X and VOC budgets for the Indiana portion of the Louisville area for 2019, which is the attainment year, as well as 2035, which is the last year of the maintenance period. The budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The budgets were clearly identified and precisely quantified. These budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

TABLE 5—MOTOR VEHICLE EMISSION BUDGETS FOR THE LOUISVILLE AREA FOR THE 2019 ATTAINMENT YEAR AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

	2019 Attainment year			2035 Maintenance year		
	Projected on-road emissions	Safety margin allocation	Total budgets	Projected on-road emissions	Safety margin allocation	Total budgets
NO_X	33.03	0	33.03	14.94	2.24	17.18
VOCs	13.65	0	13.65	4.79	0.72	5.51

As shown in Table 5, the 2035 budgets exceed the estimated 2035 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, IDEM allocated to the mobile sector a portion of the safety margin, as described further below. Indiana has demonstrated that the Indiana portion of the Louisville area can maintain the 2015 ozone NAAQS in the 2035 maintenance year with mobile source emissions of 17.18 tons per ozone season day of NO_X and 5.51 tons per ozone season day of VOCs. Despite partial allocation of the safety margin, emissions will remain under emission levels in the 2019 attainment year.

EPA is proposing to approve the budgets for use to determine transportation conformity in the Indiana portion of the Louisville area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the budgets.

B. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Tables 3 and 4, the emissions in the Indiana portion of the Louisville area are projected to have safety margins of 6.85 tons per ozone season day for NO_X and 2.01 tons per ozone season day for VOC in 2035 (the difference between emissions in the 2019 attainment year, and projected emissions in the 2035 maintenance year, for all sources in the Indiana portion of the Louisville area). Even if emissions exceeded projected levels by the full amount of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 5 above, Indiana is allocating a portion of that safety margin to the mobile source sector. In 2035, Indiana is allocating 2.24 tons per ozone season day and 0.72 tons per ozone season day of the NO_X and VOC safety margins, respectively. Indiana is not requesting allocation to the budgets of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the budgets represents only a portion of the 2035 safety margins. Therefore, even though the State is requesting budgets that exceed the projected on-road mobile source emissions for 2035 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Base Year Emissions Inventory

As discussed above, sections 172(c)(3) and 182(a)(1) of the CAA require areas to submit a base year emissions inventory. For the 2015 ozone NAAQS, EPA specifies that states submit ozone season day emissions estimates for an inventory calendar year to be consistent with the base year for RFP plans as required by 40 CFR 51.1310(b). For the RFP base year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year for the most recently available complete triennial emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area (83 FR 62998).[8] States are required to submit estimates of NO_X and VOC emissions for four general classes of anthropogenic sources: Point sources; nonpoint sources; on-road mobile sources; and nonroad mobile sources. In addition, states may include biogenic emissions as well as event emissions, which are discrete and short-lived sources such as wildfires. *See* the SIP requirements for the 2015 ozone standard in EPA's December 6, 2018 implementation rule (83 FR 62998), and EPA's 2017 document ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations.'' [9]

In its January 21, 2021, submittal, Indiana requested that EPA approve into its SIP an inventory addressing the emissions inventory requirement of CAA section 182(a)(1). Indiana's SIP revision included inventories of NO_X and VOC emissions for several nonattainment areas, including the Indiana portion of the Louisville area, for the year 2017. At the time of its

[8] The RFP requirements specified in CAA section 182(b)(1) applies to all ozone nonattainment areas classified Moderate or higher.

[9] *https://www.epa.gov/sites/default/files/2016-12/documents/2016_ei_guidance_for_naaqs.pdf.*

submittal, data for 2017 was the most recent comprehensive, accurate, and quality assured triennial emissions inventory in the NEI database.

The primary source for Indiana's 2017 inventory is the annual emissions data contained in the 2017 NEI. In developing this inventory, Indiana estimated emissions per ozone season day. To convert annual emissions data to ozone season day values, emissions from June to August, IDEM extracted data from EPA's 2017 Emissions modeling platform and calculated a conversion factor for the EGU, point, nonpoint, on-road, nonroad categories.[10]

NO_X and VOC emissions data for the year 2017 are shown in Tables 6 and 7 below. Data are expressed in terms of tons per ozone season day.

TABLE 6—NO_X EMISSIONS FOR COUNTIES IN THE INDIANA PORTION OF THE AREA FOR THE 2017 BASE YEAR

[Tons per ozone season day]

	Point	Nonpoint	On-road	Nonroad	EGU	Total
Indiana	1.58	2.05	11.03	1.92	1.12	17.70

TABLE 7—VOC EMISSIONS FOR COUNTIES IN THE INDIANA PORTION OF THE LOUISVILLE AREA FOR THE 2017 BASE YEAR

[Tons per ozone season day]

	Point	Nonpoint	On-road	Nonroad	EGU	Total
Indiana	2.12	11.21	4.41	1.14	0.03	18.91

Indiana's January 21, 2021, emissions inventory submission includes a demonstration showing that CAA section 110(l) does not prohibit approval of this SIP revision; such a demonstration is sometimes called an anti-backsliding demonstration. Section 110(l) provides that EPA cannot approve a SIP revision if the revision would interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA. IDEM is making this submission as required by CAA sections 172(c)(3) and 182(a)(1), and approval of the 2017 base year inventories would strengthen the Indiana SIP and would not interfere with any applicable CAA requirement.

EPA reviewed Indiana's January 21, 2021, submittal for consistency with sections 172(c)(3) and 182(a)(1) of the CAA, and with EPA's emissions inventory requirements. In particular, EPA reviewed the techniques used by IDEM to derive and quality assure the emissions estimates. The documentation of the emissions estimation procedures is thorough and is adequate for EPA to determine that Indiana followed acceptable procedures to estimate the emissions. Accordingly, we propose to conclude that Indiana has developed inventories of NO_X and VOC emissions that are comprehensive and complete. EPA therefore proposes to approve the emissions inventory for the Indiana portion of the Louisville area in Indiana's January 21, 2021, submittal and shown above in Tables 6 and 7 as meeting the emissions inventory requirements of sections 172(c)(3) and 182(a)(1) of the CAA.

In this rulemaking, EPA is only evaluating the portions of Indiana's January 21, 2021, emissions inventory submittal relating to the Indiana portion of the Louisville area. EPA is not evaluating inventories relating to other nonattainment areas. Instead, EPA will evaluate these inventories in a separate rulemaking.

VII. Emissions Statement

Section 182(a)(3)(B) of the CAA requires states to include regulations in the SIP to require sources (source facilities) to submit annual statements characterizing sources of NO_X and VOC emission within the source facilities and to report actual NO_X and VOC emissions for these sources. IDEM confirmed in the January 21, 2021, submittal and September 10, 2021, supplement that IDEM's emissions reporting rule at 326 Indiana Administrative Code (IAC) 2–6, remains in place and adequate to meet the CAA section 182(a)(3)(B) emission statement requirement for the 2015 ozone standard. This rule specifically requires all facilities located in Lake, Porter, Clark, and Floyd Counties that emit greater than or equal to 25 tons/year of NO_X or VOC during the reporting year to submit annual emissions statements.

EPA approved IDEM's emissions reporting rule, IAC 2–6, into the Indiana SIP on June 16, 2021, 86 FR 31922, and it is currently being implemented. The rule requires sources of NO_X and VOC in Lake, Porter, Clark, and Floyd Counties to annually report emissions if the sources emit NO_X or VOC equaling or exceeding 25 tons per year. Therefore, IDEM's rule IAC 2–6 meet the requirements of CAA section 182(a)(3)(B).

VIII. What action is EPA taking?

EPA is proposing to determine that the Indiana portion of the Louisville nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021 as presented in Indiana's February 21, 2022 submittal. EPA is proposing to approve portions of Indiana's January 21, 2021, submittal as meeting the base year emissions inventory and emissions statement requirements of sections 182(a)(1) and 182(a)(3), respectively. EPA is proposing to determine that upon final approval of Indiana's 2017 base year emissions inventory and emission statement SIP, the area will have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Indiana portion of the Louisville area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Indiana SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Indiana portion of the Louisville area in attainment of the 2015 ozone NAAQS through 2035. EPA finds adequate and is proposing to approve the newly-established 2035 budgets for the Louisville area.

[10] *https://www.epa.gov/air-emissions-modeling/2017-emissions-modeling-platform.*

IX. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, the proposed actions to approve Indiana's SIP submissions merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that these reasons, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: May 11, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–10556 Filed 5–17–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2021–0664; FRL–8511–01–OAR]

RIN 2060–AV30

Review of Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal presents the preliminary results of the Environmental Protection Agency's (EPA's) review of the New Source Performance Standards (NSPS) for Automobile and Light Duty Truck Surface Coating Operations as required by the Clean Air Act (CAA). The EPA is proposing, in a new NSPS subpart, revised volatile organic compound (VOC) emission limits for prime coat, guide coat, and topcoat operations for affected facilities that commence construction, modification or reconstruction after May 18, 2022. In addition, the EPA is proposing amendments under the new NSPS subpart: Revision of the plastic parts provision; updates to the control devices and control device testing and monitoring requirements; revision of the transfer efficiency provisions; revision of the recordkeeping and reporting requirements, the addition of work practices to minimize VOC emissions; the addition of electronic reporting; clarification of the requirements for periods of startup, shutdown and malfunction; and other amendments to harmonize the new NSPS subpart and Automobile and Light Duty Truck Surface Coating National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. The EPA is also proposing to amend NSPS subpart MM to apply to sources that commence construction, reconstruction, or modification after October 5, 1979, and on or before May 18, 2022 and to add electronic reporting requirements.

DATES: Comments must be received on or before July 18, 2022. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 17, 2022.

Public hearing: If anyone contacts us requesting a public hearing on or before May 23, 2022, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0664, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0664 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2021–0664.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2021–0664, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be

posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continue to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Paula Deselich Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. Please note that because of current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the virtual hearing will be held on June 2, 2022. The hearing will convene at 9:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/automobile-and-light-duty-truck-surface-coating-operations-new.*

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/automobile-and-light-duty-truck-surface-coating-operations-new* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be May 31, 2022. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/automobile-and-light-duty-truck-surface-coating-operations-new.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *hirtz.paula@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/automobile-and-light-duty-truck-surface-coating-operations-new.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by May 25, 2022. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2021–0664. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, 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. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2021–0664. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the 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 the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information

about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Due to public health concerns related to COVID–19, the Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2021–0664. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this notice the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

BACT Best Available Control Technology
BID Background Information Document
BSER Best System of Emissions Reduction
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
CO carbon monoxide
CPMS Continuous Parametric Monitoring System
CTG Control Techniques Guidelines
EDP electrodeposition
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
LAER Lowest Available Control Technology
kg/l acs kilogram per liter of applied coating solids
mtCO2e metric tons of carbon dioxide equivalents
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
Non-EDP non-electrodeposition
NSPS New Source Performance Standards
NTTAA National Technology Transfer and Advancement
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
lb/gal acs pounds per gallon of applied coating solids
PM particulate matter
PRA Paperwork Reduction Act
RACT Reasonably Available Control Technology
RIA Regulatory Impact Analysis
RIN Regulatory Information Number
RTO Regenerative Thermal Oxidizer
SBA Small Business Administration
SSM startup, shutdown, and malfunctions
scfh standard cubic feet per hour
scfm standard cubic feet per minute
tpy tons per year
TSD Technical Support Document
U.S.C. United States Code
VCS Voluntary Consensus Standards
VOC volatile organic compound(s)

Organization of this document. The information in this preamble is organized as follows:

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IV. Analytical Results and Proposed Rule Summary and Rationale
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J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The source category that is the subject of this proposal is automobile and light duty truck (ALDT) surface coating operations regulated under CAA section 111 New Source Performance Standards. The North American Industry Classification System (NAICS) codes for the ALDT manufacturing

industry are 336111 (automotive manufacturing), 336112 (light truck and utility vehicle manufacturing), and 336211 (manufacturing of truck and bus bodies and cabs and automobile bodies). These NAICS codes provide a guide for readers regarding the entities this proposed action is likely to affect. We estimate that 15 facilities engaged in ALDT manufacturing will be affected by this proposal over the next 8 years. The proposed standards, once promulgated, will be directly applicable to affected facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Federal, state, local, and tribal government entities would not be affected by this proposed action.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/automobile-and-light-duty-truck-surface-coating-operations-new.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

The proposed changes to the CFR that would be necessary to incorporate the changes proposed in this action are presented in an attachment to the memorandum titled: *Proposed Regulation Edits for 40 CFR part 60, subparts MM and MMa: Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.* This memorandum is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2021–0664). Following signature by the EPA Administrator, the EPA will also post a copy of the memorandum and the attachments to *https://www.epa.gov/stationary-sources-air-pollution/automobile-and-light-duty-truck-surface-coating-operations-new.*

II. Background

A. What is the statutory authority for this action?

The EPA's authority for this rule is CAA section 111, which governs the establishment of standards of performance for stationary sources. Section 111(b)(1)(A) of the CAA requires the EPA Administrator to list categories of stationary sources that in the Administrator's judgment cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for new (and modified or reconstructed) sources in each source category pursuant to CAA section 111(b)(1)(B). These standards are referred to as new source performance standards or NSPS. The EPA has the authority to define the scope of the source categories, determine the pollutants for which standards should be developed, set the emission level of the standards, and distinguish among classes, types, and sizes within categories in establishing the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' new source performance standards. In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to ''reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' 42 U.S.C. 7411(a)(1). This definition makes clear that the EPA is to determine both the best system of emission reduction (BSER) for the regulated sources in the source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency. CAA section 111(b)(5) precludes the EPA from prescribing a particular technological system that must be used to comply with a standard of performance. Rather, sources can select any measure or combination of measures that will achieve the standard.

Pursuant to the definition of new source in CAA section 111(a)(2), proposed standards of performance apply to facilities that commence construction, reconstruction, or modification after the date of publication of such proposed standards in the **Federal Register**.

B. What is the source category and how does the current standard regulate emissions?

Pursuant to the CAA section 111 authority described above, the EPA listed the ALDT surface coating source category as a source category under CAA section 111(b)(1). 44 FR 49222, 49226 (Aug. 21, 1979).).

The NSPS for ALDT surface coating operations (ALDT NSPS) were promulgated at 40 CFR part 60, subpart MM on December 24, 1980 (45 FR 85415, December 24, 1980). Subpart MM applies to affected facilities that commence construction, reconstruction, or modification after October 5, 1979. The affected facility is defined as each prime coat operation, each guide coat operation, and each topcoat operation in an automobile or light duty truck assembly plant. The NSPS applies to these sources regardless of production capacity. The ALDT NSPS established VOC emission limits calculated on a monthly basis for each electrodeposition (EDP) prime coat operation, guide coat (primer-surfacer) operation and topcoat operation. The emission limits and reporting requirements in the 1980 ALDT NSPS were amended in a series of actions from 1980 to 1994 (59 FR 51383, October 11, 1994) to include innovative technology review waivers to increase the topcoat operation VOC emission limitations for certain plants, to reduce the reporting frequency for deviations from the rule requirements from quarterly to semiannually, and to revise the VOC emission limitation for the EDP prime coat operation in response to an industry petition for reconsideration. The innovative technology waivers were issued under CAA sections 111(j) and 173 to nine auto assembly plants for topcoat operations based on their continued use of solvent borne topcoat (base coat/clear coat enamel) to achieve a high-quality finish instead of converting to a waterborne topcoat. The VOC emission limits for the EDP prime coat operation were revised in response to an industry reconsideration petition to base the emission limit on an equation that includes a term for the EDP prime coat dip tank solids turnover ratio (R_T), which is the ratio of the total volume of coating solids that is added to the EDP prime coat system in a calendar month divided by the total volume design capacity of the EDP prime coat system.

Subsequent to the ALDT NSPS, the EPA promulgated other regulatory actions pursuant to CAA sections 112 and CAA 183(e) that also regulate or otherwise address emissions from the same ALDT surface coating operations. These regulatory actions include: the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks at 40 CFR part 63, subpart IIII (ALDT NESHAP) promulgated on April 26, 2004 (69 FR 22623), the Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly

Coatings, EPA–453/R–08–006, September 2008 (2008 ALDT CTG) and the ALDT NESHAP risk and technology review (RTR) promulgated on July 8, 2020 (85 FR 41100).

Although the resulting ALDT NESHAP requirements and ALDT CTG recommendations cannot be compared directly to the ALDT NSPS due to the differences in CAA authorities, pollutants, emission limits and format, they apply to the same coating materials and operations and were therefore considered in our review.

The affected surface coating operations at an assembly plant described in the 1980 ALDT NSPS included the prime coat operation, the guide coat operation, and the topcoat operation. The prime coat operation employed the use of a waterborne coating and included the prime coat spray booth or dip tank, a series of rinses, and a bake oven to apply and cure the prime coat on automobile and light-duty truck bodies. The guide coat operation followed the prime coat operation and included the guide coat spray booth, flash-off area and bake oven(s) which were used to apply and dry or cure a surface coating between the prime coat and topcoat operations on the components of automobile and light-duty truck bodies. The topcoat operation followed the guide coat operation and included the topcoat spray booth, flash-off area, and bake oven(s) which were used to apply and dry or cure the final coating(s) on components of automobile and light-duty truck bodies. The topcoat operation included both single stage topcoats (lacquers) and topcoats applied in two stages (enamels) consisting of a pigmented basecoat applied prior to an overlying clearcoat.

As discussed in the 1979 ALDT NSPS proposal preamble, most ALDT facilities had non-EDP (spray applied) prime coat systems and planned to switch to an EDP (dip tank) prime coat system to reduce VOC emissions to comply with state implementation plans (SIPs) (44 FR 57795). No control devices were used to control prime coat operation emissions at that time. For guide coat and topcoat operations, only two ALDT facilities used waterborne coatings and the remaining facilities used solvent borne coatings. Topcoat operations employed the use of solvent borne coatings and VOC control devices such as regenerative thermal oxidizers (RTO) and catalytic oxidizers.

The 1979 ALDT NSPS proposal evaluated two regulatory options to control VOC emissions from ALDT surface coating operations. (44 FR 57795) The first option was determined to be the standard that reflected the level of emission reduction achievable by the BSER and was based on two equivalent control alternatives. Alternative A was based on the use of EDP waterborne prime coat, waterborne guide coats and topcoats, and no controls; and Alternative B was based on the use of EDP waterborne prime coat and solvent borne guide coats and topcoats, with control of the topcoat booth and oven. The second regulatory option was determined to be not cost-effective and consisted of Alternative B with control of the guide coat booth and oven. The evaluation also took into account the differences between ALDT surface coating operations using lacquer coatings versus enamel coatings as the industry was in the process of converting to enamel coatings at the time. The associated energy and economic impacts of the options were also assessed using growth projections for the industry. Additional details on the development of the ALDT NSPS can be found in the document titled *Automobile and Light Duty Truck Surface Coating Operations, Background Information for Proposed Standards, EPA–450/3–79–030, September 1979,* available in the docket for this action.

The ALDT NSPS, as promulgated in 1980 and amended in 1994, established separate volatile organic compounds (VOC) emission limitations for each surface coating operation:

- For prime coat operations
  - For EDP (dip tank) prime coat, 0.17 to 0.34 kilograms VOC/liter applied coating solids (kg VOC/l acs) (1.42 to 2.84 lbs VOC/gal acs) depending on the solids turnover ratio (R_T); For R_T greater than 0.16, the limit is 0.17 kg VOC/l acs (1.42 lb VOC/gal acs); for turnover ratios less than 0.04, there is no emission limit.
  - For Non-EDP (spray applied) prime coat, 0.17 kg VOC/l acs (1.42 lb VOC/gal acs);
- For guide coat operations, 1.40 kg VOC/l acs (11.7 lb VOC/gal acs); and
- For topcoat operations, 1.47 kg VOC/l acs (12.3 lb VOC/gal acs).

Surface coating operations for plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines are exempted from the ALDT NSPS; however, the attachment of plastic body parts to a metal body before the body is coated does not cause the metal body coating operation to be exempted.

The ALDT NSPS requires a monthly compliance demonstration for each operation which is the calculation of mass of VOC emitted per volume of applied coating solids (kg VOC/l acs or lbs VOC/gal acs) each calendar month. The ALDT NSPS provides default transfer efficiencies (TE) for the various surface coating application methods that were in practice at the time for the monthly compliance calculation. TE is the ratio of the amount of coating solids transferred onto the surface of a part or product to the total amount of coating solids used. Higher TEs indicate a higher fraction of coatings solids are deposited onto the part or product and a lower fraction of coating solids become overspray that is captured by the spray booth filters or is deposited onto the spray booth grates, walls and floor, or to the water collection system below the grates. The default TE values in the NSPS also account for the recovery of purge solvent. The monthly compliance calculation also takes into consideration the VOC destruction efficiency (as determined by the initial or the most recent performance testing of control devices) needed to meet the VOC emission limitations. The control devices identified in the ALDT NSPS include thermal and catalytic oxidizers. In addition, the NSPS requires continuous monitoring of temperature for the thermal and catalytic oxidizers. Quarterly reporting is required to report emission limit exceedances and negative reports are required for no exceedances.

Today, all prime coat operations at ALDT facilities use waterborne coatings and cathodic EDP systems. The guide coat operations use a variety of coatings, including waterborne, solvent borne and powder coatings using automatic (including robotic) and manual high efficiency spray application technologies. The topcoat operations use waterborne and solvent borne coatings and are applied using a ''2-wet'' application process using automatic (including robotic) and manual and high efficiency spray application technologies. The guide coat and topcoat processes have also been combined by some facilities in an application referred to as ''3-wet'' process in which the guide coat booth is followed by a heated flash zone (instead of an oven) and the topcoat (base coat and clearcoat) is subsequently applied before the vehicle body proceeds to the topcoat flash zone and oven. Additional details on the developments and current industry practices can be found in the document titled *Best System of Emission Reduction Review for Surface Coating Operations in the Automobile and Light-Duty Truck Source Category (40 CFR part 60, subpart MM),* located in the docket for this action.

The EPA estimates that there are 45 ALDT assembly plants located in 14 states and owned by 16 different parent companies. Of the 45 ALDT assembly plants, one parent company owning a single plant will no longer be considered a small entity by the end of this year (2022) due to the anticipated sale of the affected portions of the plant to a company that is not a small entity. One other plant plans to start construction in May 2022 and is not a small entity. We did not include this plant in our NSPS review due to lack of data for the plant, but we did include its location in our demographic analysis and tribal proximity analysis.

Based on our review, we have determined that 44 of the 45 assembly plants are currently subject to the ALDT NSPS in 40 CFR part 60, subpart MM, all of which have affected surface coating operations that were constructed, reconstructed, or modified after October 5, 1979. One plant is not subject to the ALDT NSPS due to an exemption for the coating of all plastic bodies, which we address in this action. Based on our review of best achievable control technology (BACT) and lowest achievable emission rate (LAER) limits for new, modified, or reconstructed ALDT surface coating operations, we determined that about one-third of the assembly plants are subject to limits that are more stringent than the limits in the ALDT NSPS subpart MM. We also determined that 44 of the 45 ALDT assembly plants are also currently subject to the ALDT NESHAP in 40 CFR part 63, subpart IIII. One plant is not subject to the ALDT NESHAP because it is considered to be an area source and not a major source under CAA section 112. The number of employees and annual revenues are expected to increase for this plant as it increases production and is expected to become a CAA 112 major source in 2022. Therefore, for the purpose of this analysis, it was considered to be a CAA 112 major source.

C. What data collection activities were conducted to support this action?

During our review of the current ALDT NSPS (40 CFR part 60, subpart MM) and the development of the proposed new ALDT NSPS subpart MMa (*i.e.,* 40 CFR part 60, subpart MMa) we used emissions and supporting data from the 2017 National Emissions Inventory (NEI). A variety of sources were used to compile a list of facilities subject to subpart MM. The list was based on information provided by the industry association, the Auto Industry Forum, and confirmed with information downloaded from the EPA's Enforcement and Compliance History Online (ECHO) database and the EPA's Emissions Inventory System (EIS) database. The ECHO system contains compliance and permit data for stationary sources regulated by the EPA. The ECHO database was queried by Standard Industrial Classification (SIC) and NAICS code as well as by subpart.

We also reviewed EPA's RACT/BACT/LAER Clearinghouse database to identify BACT and LAER determinations for ALDT surface coating operations, including more stringent emission limitations than the ALDT NSPS as well as potential new control technologies. The terms ''RACT,'' ''BACT,'' and ''LAER'' are acronyms for different program requirements relevant to the NSR program. RACT, or Reasonably Available Control Technology, is required on existing sources in areas that are not meeting national ambient air quality standards (NAAQS) (non-attainment areas). BACT, or Best Available Control Technology, is required on new or modified major sources in areas meeting NAAQS (attainment areas). LAER, or Lowest Achievable Emission Rate, is required on new or modified major sources in non-attainment areas.

D. What other relevant background information and data are available?

In addition to the NEI, ECHO and EIS databases, the EPA reviewed the additional information sources listed below for advances in technologies, changes in cost, and other factors to review the standards for ALDT affected sources. These include the following:

- Operating permits for 40 of 44 of the ALDT assembly plants.
- Compliance demonstration reports including control device performance data for one-fourth of the plants.
- Publicly available facility inspection reports and other information on state websites.
- Construction permits and BACT determinations from EPA Region 5 and state agencies.
- *Automobile and Light Duty Truck Surface Coating Operations, Background Information for Proposed Standards,* EPA–450/3–79–030, September 1979.
- *Automobile and Light Duty Truck Surface Coating Operations, Background Information for Promulgated Standards,* EPA–450/3–79–030b, September 1980.
- Background documents and industry supplied data for supporting regulatory actions promulgated subsequent to the 1980 ALDT NSPS, including the 2004 ALDT NESHAP, the 2020 RTR amendments to the 2004 ALDT NESHAP, and the 2008 CTG for Automobile and Light-Duty Truck Assembly Coatings.

III. How does the EPA perform the NSPS review?

As noted in section II.A., CAA section 111 requires the EPA, at least every 8 years to review and, if appropriate revise the standards of performance applicable to new, modified, and reconstructed sources. If the EPA revises the standards of performance, they must reflect the degree of emission limitation achievable through the application of the BSER taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements. CAA section 111(a)(1).

In reviewing an NSPS to determine whether it is ''appropriate'' to revise the standards of performance, the EPA evaluates the statutory factors, including the following information:

- Expected growth for the source category, including how many new facilities, reconstructions, and modifications may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that are ''adequately demonstrated'' in the regulated industry.
- Available information from the implementation and enforcement of current requirements indicates that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

In evaluating whether the cost of a particular system of emission reduction is reasonable, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The agency considers these costs in the context of the industry's overall capital expenditures and revenues. The agency also considers cost-effectiveness

analysis as a useful metric, and a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost-effectiveness analysis allows comparisons of relative costs and outcomes (effects) of two or more options. In general, cost-effectiveness is a measure of the outcomes produced by resources spent. In the context of air pollution control options, cost-effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually.

After the EPA evaluates the factors described above, the EPA then compares the various systems of emission reductions and determines which system is ''best.'' The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. In doing this analysis, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources, and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the new source performance standards reflect the best system of emission reduction under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards.

See sections II.C. and D. of this preamble for information on the specific data sources that were reviewed as part of this action.

IV. Analytical Results and Proposed Rule Summary and Rationale

A. What are the results and proposed decisions based on our NSPS review, and what is the rationale for those decisions?

This action presents the EPA's review of the requirements of 40 CFR part 60, subpart MM pursuant to CAA 111(b)(1)(B). As described in section III of this preamble, the statutory review of NSPS subpart MM for ALDT surface coating operations focused on whether there are any emission reduction techniques that are used in practice that achieve greater emission reductions than those currently required by NSPS subpart MM for ALDT surface coating operations and whether any of these developments in practices have become the ''best system of emissions reduction.'' Based on this review, we have determined that there are techniques used in practice that achieve greater emission reductions than those currently required by NSPS subpart MM for ALDT surface coating operations. The results and proposed decisions based on the analyses performed pursuant to CAA section 111(b) are presented in more detail below. Pursuant to CAA section 111(a), the proposed standards included in this action would apply to facilities that begin construction, reconstruction, or modification after May 18, 2022.

To develop the costs and emission reductions for this review we used data obtained from readily available stack test reports and operating permits for eight ALDT facilities. Although the prime coat, guide coat, and topcoat operations are separate affected facilities with separate emission limitations, the operations are considered to be a surface coating system and as such, we found during our review they are often controlled as a system and share common control devices. These control devices also control other operations that are not affected facilities and are not subject to the ALDT NSPS (*i.e.,* sealer/deadener ovens subject to more stringent requirements than ALDT CTG presumptive RACT are vented to a shared RTO). Few surface coating operations have dedicated control devices, so it was challenging to estimate the cost and emission reduction associated with controlling each individual affected facility (*i.e.,* the prime coat, guide coat, and topcoat affected facility) for each option. We are soliciting comments (including data, information, analysis and other input) with respect to the emission reductions and cost-effectiveness identified for each option presented below. Additional detailed information on control devices used by the industry and the methodology used to estimate the emission reductions and cost-effectiveness are provided in the memorandum titled *Cost and Environmental Impacts Memo for Surface Coating Operations in the Automobiles and Light-Duty Trucks Source Category (40 CFR part 60, subpart MMa),* located in the docket for this action.

As required by CAA section 111, the EPA's BSER analysis for ALDT NSPS affected surface coating operations (prime coat, guide coat, and topcoat) considered the air quality impacts of the VOC-reducing control measures and the secondary impacts of these control measures. Indirect or secondary impacts are impacts that would result from the increased electricity usage and natural gas consumption associated with the operation of control devices to meet the revised VOC emission limits proposed for subpart MMa. These impacts were calculated on a per facility basis and were based on the ALDT facilities for which we had data. Based on the data for these ALDT facilities all three surface coating operations were affected and the entire coating line was considered to be new, reconstructed or modified. The annual average VOC emission reduction associated with the BSER analysis for the three ALDT affected surface coating operations is estimated to be 331 tpy per facility. The energy impact estimates associated with these VOC emission reductions include an increase in the average electricity consumption per facility of 2.54 million kwh per year and an increase in the average natural gas consumption per facility of 48.8 million scf per year. Based on these results, the EPA concluded there are no meaningful secondary impacts associated with this proposed action.

The EPA also evaluated other air quality impacts of the control measures including greenhouse gas (GHG) production. We estimate the increased usage of electricity and natural gas would result in an increase in the average production of 4,474 metric tons of carbon dioxide equivalents (mtCO2e) of GHG emissions per facility per year. We did not evaluate the impacts of the control measures on other pollutants such as hydrocarbons (other than VOC), NO_X, and CO. We found these pollutants to be regulated by the states for this source category. Based on these results, the EPA concluded there are no meaningful impacts associated with other criteria pollutants as a result of this proposed action.

We are soliciting comments (including data, information, analysis and other input) with respect to the results of our analysis of the air emissions impacts, including the secondary impacts of the control measures presented here. Additional detailed information is provided in the memorandum titled *Cost and Environmental Impacts Memo for Surface Coating Operations in the Automobiles and Light-Duty Trucks Source Category (40 CFR part 60, subpart MMa),* located in the docket for this action.

a. What are the proposed requirements for new ALDT prime coat operations?

The ALDT surface coating process begins with a bare metal vehicle body. The body first goes through a zinc phosphate process. This process removes particulates from surface of the vehicle body. It also provides corrosion resistance and promotes adhesion between the metal and paint. The vehicle body is then submerged in the EDP prime coat dip tank. The EDP prime coat tank contains a mixture of water, particles of resin and pigment, and solvent. An electric current in the bath causes prime coat particles to deposit onto the body, including into enclosed areas that would not be coated in a conventional spray coating operation. After a predetermined amount of prime coat has been deposited, the body is removed from the bath, rinsed of excess coating, and then goes to a heated oven to cure the primer. Inside the curing oven, solvent that is contained in the primer particles is released. The VOC emissions from ALDT prime coat operations are generated from the evaporation of solvent in the EDP prime coat curing oven and, to a much lesser extent, from evaporation of the solvent included in the aqueous solution in the dip tank.

The current ALDT NSPS prime coat limit in 40 CFR 60.392(a) is 0.17 kg VOC/l acs (1.42 lb VOC/gal acs) and is based on the use of waterborne EDP prime coat operation without the use of add-on controls. According to facility operating permits reviewed for this action, 19 facilities with 28 EDP prime coat operations are currently subject to more stringent prime coat limits than the current ALDT NSPS prime coat limit. All but two of these 28 EDP prime coat operations with more stringent limits are controlled with a thermal oxidizer, catalytic oxidizer, or RTO on the curing oven exhaust. Four of these facilities also control the emissions from the EDP prime coat dip tank (in addition to the oven emissions) with some form of thermal oxidation. The prime coat limits for these facilities that are more stringent than the NSPS range from 0.005 kg/l acs (0.04 lb VOC/gal acs) to 0.16 kg VOC/l acs (1.34 lb VOC/gal acs); the average is 0.040 kg VOC/l acs (0.33 lb VOC/gal acs) and the median is 0.024 kg VOC/l acs (0.20 lb VOC/gal acs). As a result of the information and findings described above, we evaluated two regulatory options that are more stringent than the current NSPS for prime coat operation, that are demonstrated by facilities using an EDP prime coat dip tank system to apply the prime coat.

The first option evaluated in the ALDT NSPS review is a numerical VOC emission limit of 0.028 kg VOC/l acs (0.23 lb VOC/gal acs) based only on control of the curing oven emissions with thermal oxidation (*e.g.,* an RTO) that is capable of achieving 95-percent destruction and removal efficiency (DRE). The estimated annual cost of control per facility would be $356,000/year and the annual VOC emission reductions per facility would be 52 tpy, for a cost-effectiveness of $6,800/ton of VOC reduced. The EPA considers this option to be cost-effective over the baseline level of control. This regulatory option is also consistent with a compliance option for EDP primer systems in the ALDT NESHAP (40 CFR 63, subpart IIII). At 40 CFR 63.3092(b), affected sources may exclude the EDP prime coat emissions from their compliance calculations if the emissions from the oven used to cure EDP primers are captured and controlled by a control device having a destruction or removal efficiency of at least 95 percent. This compliance option is one of the reasons why many EDP prime coat affected sources are already fitted with a control device on the EDP prime coat ovens. Another option under 40 CFR 63.3092(a) allows source owners to exclude the EDP prime coat emissions from their compliance calculations is to ensure that each individual material added to the EDP primer system contains no more than a prescribed level of HAP; however, this option is less feasible for most facilities because certain materials commonly used in the EDP prime coat process cannot meet these criteria.

The second option we evaluated is a numerical VOC emission limit of 0.005 kg/l acs (0.040 lb VOC/gal acs) to reflect control of both the oven and the tank emissions with an RTO capable of achieving 95 percent DRE. Based on data from emissions testing at a facility with this control option, we estimated the cost-effectiveness of controlling the tank emissions to be $91,061 per ton of VOC reduced. In addition, we estimated this option would achieve (only) an additional 3 tpy of VOC reductions over the first option and would have an estimated incremental cost-effectiveness of $46,000 per ton of VOC reduced compared to the first option. Because this option is significantly less cost-effective than the baseline level of control, and has a high incremental cost per ton compared to the first option, we have determined the second option does not reflect BSER.

Based on the analysis described above, we are proposing to revise the VOC emission limit for the prime coat operation. The proposed VOC emission limit reflects the EPA's determination that control of the curing oven emissions with thermal oxidation that is capable of achieving 95 percent DRE represents the updated BSER for prime coat operation. The proposed revised standard would limit VOC emissions from prime coat operations to 0.028 kg VOC/l acs (0.23 lb VOC/gal acs) based on the control of the curing oven emissions only. This proposed VOC emission limit also matches the operating permit limit for 13 of the 44 plants for which we have data, therefore we consider this limit to be adequately demonstrated.

If finalized, the revised emission limit for prime coat operations will appear as the new limit in the new ALDT NSPS subpart MMa. It will not include the solids turnover ratio (R_T) which is a factor in determining VOC emission limit for the prime coat dip tank in the current subpart MM, because this factor is not included in the facility permits that are more stringent than the NSPS and that were the basis of our revised BSER determination.

In the current subpart MM, the VOC emission limit for the dip tank varies according to the solids turnover ratio. As the R_T varies (ranging from 0.040 (or less) to 0.16 (or greater)), the emission limit varies (ranging from 0 to 0.17 kg VOC/l acs). In the current subpart MM, the non-EDP (spray-applied) prime coat emission limit matches the maximum EDP prime coat limit of 0.17 kg VOC/l acs and does not include the R_T because the coating solids are not depleted in a spray application as they are in a dip tank.

Because the permit limits do not include factors to account for the solids turnover ratio, we understand that to mean that facilities currently using the EDP prime coat process are able to consistently maintain the solids turnover ratio at a value equal to or greater than 0.16, and we are proposing that the R_T factor is no longer needed. Similar to the current subpart MM, we are also proposing the same emission limit of 0.028 kg VOC/l acs (0.23 lb VOC/gal acs) for non-EDP (spray-applied) prime coat operations in subpart MMa.

In conclusion, based on our review, the EPA is proposing in a new subpart (subpart MMa) a VOC emission limit of 0.028 kg VOC/l acs (0.23 lb VOC/gal acs) for the prime coat operation based on the control of the curing oven emissions with thermal oxidation (*e.g.,* an RTO) that is capable of achieving 95 percent DRE for prime coat operations that commence construction, reconstruction, or modification after May 18, 2022.

b. What are the proposed requirements for new ALDT guide coat operations?

After the prime coat operation, sealer and other materials are applied to the vehicle body. The vehicle body is then routed to a series of spray booths and ovens in which a guide coat is applied followed by application of the topcoat which consists of a base coat and a clear coat. Review of the facility operating permits show that current guide coat operations use either a waterborne or solvent borne coating with a small number of facilities using a powder guide coat. The guide coat operation may have heated flash off zones, in addition to, or replacing the guide coat oven. The guide coat can be applied in either a 2-wet coating process or a 3-wet coating process. In a 2-wet coating process, the guide coat is fully cured in an oven before the following topcoat operation. In a 3-wet coating process, the guide coat is partially cured in a heated flash off area before the following topcoat operation. The VOC emissions from the guide coat curing ovens are almost always controlled by a thermal oxidizer. The VOC emissions from the guide coat booths and flash off areas may be controlled by either a thermal oxidizer or by a combination of a concentrator followed by a thermal oxidizer. The concentrator may be either a carbon adsorber or zeolite-based system. The VOC emissions from ALDT guide coat operations are generated from the evaporation of solvent in the guide coat spray booth, flash off zone, and curing oven.

The current ALDT NSPS guide coat limit in 40 CFR 60.392 is 1.40 kg VOC/l acs (11.7 lb VOC/gal acs) and was based on the use of waterborne or solvent borne guide coats without the use of add-on controls. According to facility operating permits, 14 facilities with 31 guide coat lines (including some anti-chip coatings that are used in addition to the guide coat) are subject to more stringent guide coat limits than the current ALDT NSPS limit. Three facilities with guide coating limits more stringent than the ALDT NSPS are using powder coating for the guide coating operation, according to the operating permits collected and reviewed by the EPA. The guide coat emission limits more stringent than the current ALDT NSPS guide coat limits range from 0.060 to 1.21 kg VOC/l acs (0.050 to 10.11 lb VOC/gal acs); and 27 of the 31 guide coat lines were subject to limits less than or equal to 0.69 kg VOC/l acs (5.5 lb VOC/gal acs). As a result of the information and findings described above, we evaluated four regulatory options that are more stringent than the current ALDT NSPS for guide coat operations. The regulatory options include the use of add-on controls for waterborne or solvent borne guide coat operations or using a powder coating system instead of a liquid coating system.

The first option evaluated in the ALDT NSPS review is a numerical VOC emission limit of 0.57 kg VOC/l acs (4.8 lb VOC/gal acs) to reflect use of solvent borne or waterborne guide coat and an RTO with 95 percent DRE on the guide coat oven only and no add-on controls for the guide coat spray booth or heated flash off zone exhausts. The limit of 0.57 kg VOC/l acs (4.8 lb VOC/gal acs) was selected to represent this option because it is the most common numerical permit limit in the range of 0.41 to 0.66 kg VOC/l acs (3.46 to 5.5 lb VOC/gal acs) matching the operating permit limit for 9 facilities with this control scenario. We estimate this option would reduce emissions from a typical guide coat operation by about 40 tpy of VOC at a cost of $4,400 per ton of VOC reduced.

The second option is a numerical VOC emission limit of 0.35 kg VOC/l acs (2.92 lb VOC/gal acs) to reflect the use of solvent borne guide coat and 95 percent control of the spray booth and oven with either a carbon adsorber and an RTO or a concentrator and an RTO. The carbon adsorber/concentrator is used to control the spray booth emissions and routes the concentrated exhaust stream to the RTO, which also controls the oven emissions. One facility meeting this limit, in addition to using a concentrator, recirculates 85 percent of the exhaust air in the spray booth back to the booth and 15 percent of the exhaust is sent to concentrator and then to the RTO, which also controls the oven emissions. This second option matches the presumptive BACT emission limit for 2020 identified by the EPA Region 5.[1] Two facilities are subject to this numerical emission limit. We estimated this option would reduce emissions from a typical guide coat operation by about 50 tpy of VOC at a cost of $4,900 per ton of VOC reduced.

The third option is a numerical VOC emission limit of 0.036 kg VOC/l acs (0.30 lb VOC/gal acs) to reflect the use of a waterborne guide coat applied in a 3-wet process for one facility. In a 3-wet process the guide coat operation and the topcoat operation are combined, and the guide coat oven is basically eliminated. The 3-wet process consists of a series of two separate booths with heated flash off zones for partial cure (one for the guide coat and one for the basecoat), followed by a clearcoat booth, a flash zone, and a topcoat oven (where the guide coat, the basecoat, and the topcoat are fully cured). The 3-wet process uses a heated flash off zone in place of the guide coat oven resulting in less emissions from the guide coat operation, and a more efficient process in terms of time and energy savings for the facility. A 3-wet process reportedly can lower a plant's energy consumption by 30 percent and reduce the total amount of process time per vehicle by 80 minutes for a 40 percent increase in productivity.

Only one facility (with two lines) uses this 3-wet process for the guide coat operation and is subject to this numerical permit limit (0.036 kg VOC/l acs (0.30 lb VOC/gal acs)). We estimate this configuration would reduce emissions from a typical guide coat operation by about 73 tpy of VOC at a cost of $3,252 per ton of VOC reduced. The costs associated with this option are for controlling the heated flash zone emissions with an RTO with 95 percent DRE. Although this third option is cost-effective when considering the cost of controls, the emission limit cannot be achieved without reconfiguring the guide coat operation to eliminate a major component (the guide coat oven), which would be a major capital investment and not cost effective for the purposes of this analysis. Therefore, the EPA is not proposing this option.

The fourth option we considered is a numerical VOC limit of 0.016 kg VOC/l acs (0.13 lb VOC/gal acs) to reflect the use of powder guide coat, instead of a liquid coating. One facility is meeting an emission limit of 0.016 kg VOC/l acs (0.13 lb VOC/gal acs) and three facilities are meeting a lower emission limit (no emission limit (0 kg VOC/l acs) or 0.006 kg VOC/l acs; no emission limit (0 lb VOC/gal acs) or 0.05 lb VOC/gal acs) based on the use of powder guide coat and no controls. The powder coating is applied electrostatically and is essentially a non-emitting process because the dry powder coating has no solvent. Guide coat operations using powder coatings emit virtually no VOCs from the booth, flash off zone(s), or curing oven. The use of powder for the guide coat operation could eliminate all VOC emissions from a typical guide coat operation with no on-going control costs and could be the best environmental outcome. However, as discussed in the memorandum titled *Best System of Emission Reduction Review for Surface Coating Operations in the Automobile and Light-Duty Truck Source Category (40 CFR part 60, subpart MM),* the

[1] See email correspondence between the U.S. EPA OAQPS and Region 5 regarding 2020 BACT values in the RBLC database for ALDT surface coating operations.

process for assessing a new exterior coating system for an ALDT manufacturer can take from 3 to 5 years to determine how it performs with respect to application, quality, performance, and durability. In a meeting with the industry, the difficulties associated with using powder coatings were discussed and included both process and quality issues. These difficulties are included in the memorandum titled *Meeting with The Auto Industry Forum and Industry Representatives,* located in the docket for this rule. Also, some manufacturers have been unable to meet their quality requirements using powder coatings. During our review we noted one facility with two powder guide coat lines switched back to liquid coatings due to the difficulties associated with applying powder coatings to ALDT vehicle bodies. Although we intend to monitor developments in the use of powder coatings due to its potential advantages (low emissions achieved without the use of controls), we are not proposing this option at this time because it is not adequately demonstrated. Further, it would be not cost effective for the purposes of this analysis due to the major capital investment associated with switching the guide coat operation from a liquid coating application to a powder coating application.

After consideration of all guide coat options, the EPA is proposing to revise the VOC limit for the guide coat operation. The proposed VOC limit reflects the EPA's determination that Option 2, the use of solvent borne guide coat and 95 percent control of the spray booth and oven with either a carbon adsorber and an RTO or a concentrator and an RTO, represents the updated BSER for guide coat operation. The proposed revised standard would limit VOC emissions from guide coat operations to 0.35 kg VOC/l acs (2.92 lb VOC/gal acs). Option 2 provides higher emission reductions than Option 1 and the same range of cost-effectiveness. This option also represents the lower range of emission limits for facilities using solvent borne guide coats. Current facility permits and industry supplied data collected by the EPA for the 2008 ALDT CTG show that solvent borne guide coats are used by three-quarters of the facilities using liquid coatings. The proposed emission limit corresponding to Option 2 is adequately demonstrated by three of 44 plants. The EPA is not proposing limits based on the third and fourth options because they are cost prohibitive.

In conclusion, based on our review, we are proposing in a new subpart (subpart MMa) a VOC emission limit of 0.35 kg VOC/l acs (2.92 lb VOC/gal acs) to reflect the use of solvent borne guide coat and 95 percent control of the spray booth and oven with either a carbon adsorber and an RTO or a concentrator and an RTO for guide coat operations that commence construction, reconstruction, or modification after May 18, 2022.

c. What are the proposed requirements for new ALDT topcoat operations?

Topcoat operations use two different coatings, a pigmented basecoat followed by a clearcoat (which can be tinted). For the basecoat, facility operating permits show that facilities use either a waterborne or solvent borne coatings. For the clearcoat, solvent borne coatings are preferred and are used by all ALDT facilities in the U.S. According to data collected for the 2008 ALDT CTG, about half the facilities were using waterborne base coats and about half were using solvent borne base coats, and all facilities were using solvent borne clear coats.[2] Powder coatings are not used for topcoat applications in the U.S.

Today's topcoat operations have several configurations. Some facilities have traditional topcoat operations similar to the guide coat operation and consist of a single spray booth, followed by a flash off zone and a topcoat oven. Topcoat operations using solvent borne basecoat and solvent borne clearcoat use this configuration to apply the coatings ''wet-on wet'' (2-wet) in the same spray booth.

Other topcoat operation configurations use separate booths to apply the basecoat and the clearcoat before the vehicle body travels thru a flash off zone and the topcoat oven. Topcoat operations using separate booths also include a heated flash off zone after the basecoat booth for a partial cure of the basecoat, in which some of the solvent is evaporated, before the clearcoat is applied in the clearcoat booth. After the clearcoat is applied, the vehicle body travels thru a flash off zone and a topcoat oven where the basecoat and the topcoat are fully cured. This configuration divides the traditional topcoat operation into separate emission sources and introduces an additional emission source (basecoat flash off zone). Today most facilities use separate booths to apply the basecoat and clearcoat.

The third topcoat configuration is the 3-wet process, which is a combination of the guide coat (or functional basecoat) and the topcoat operations. As discussed above in the guide coat option section, the 3-wet process consists of a series of two separate booths with heated flash off zones for partial cure of the guide coat and basecoat, followed by a clearcoat booth, a flash zone, and a topcoat oven (where the guide coat, the basecoat, and the topcoat are fully cured). This configuration also divides the traditional topcoat operation into two separate booths and introduces an additional emission source (basecoat flash off zone). In addition, the resulting VOC emissions in the topcoat oven are greater and are comprised of emissions from the partially cured guide coat and base coat and uncured topcoat.

The VOC emissions from ALDT topcoat operations are emitted from the spray booths, the flash off zones and the ovens from the evaporation of solvent from the basecoat and the clear coat. Most ALDT facilities control the VOC emissions from the topcoat spray booths and flash off areas with either a thermal oxidizer or a combination of a concentrator followed by a thermal oxidizer. The concentrator may be either carbon adsorber or zeolite-based system. Most ALDT facilities control the VOC emissions from the topcoat oven with a thermal oxidizer.

The current ALDT NSPS topcoat limit is based on the application of topcoat in one booth and either on the use of waterborne topcoats (waterborne base coat and clearcoat) with no control of the VOC emissions or the use of solvent borne topcoats (solvent borne basecoat and clearcoat) with control of the topcoat booth and oven with a thermal or catalytic oxidizer.

According to facility operating permits, 20 facilities are operating about 25 topcoat lines that are subject to more stringent topcoat limits than the current ALDT NSPS limit of 1.47 kg VOC/l acs (12.3 lb VOC/gal acs). The limits more stringent than the current ALDT NSPS range from 0.28 to 1.44 kg VOC/l acs (2.32 to 12.0 lb VOC/gal acs). As a result of the information and findings described above, we evaluated two regulatory options that are more stringent than the current ALDT NSPS for topcoat operations. The regulatory options include the use of add-on controls for both waterborne and solvent borne basecoats and the use of add-on controls for solvent borne clear coats.

The first option evaluated in the ALDT NSPS review for topcoat operations is based on facilities demonstrating control of the clear coat spray booth and the topcoat oven to meet a topcoat limit of 0.62 kg VOC/l acs (5.20 lb VOC/gal acs). The add-on controls used by facilities demonstrating these emission limits include a thermal

[2] U.S. EPA Summary of 2006–2007 Volatile Organic Compound (VOC) Data. EPA Docket Item No. EPA–HQ–OAR–2008–0413–0041.

oxidizer, usually an RTO achieving 95 percent control of the captured emissions and a concentrator, such as a carbon adsorber or rotary carbon adsorber before the RTO. The concentrator is typically used on relatively high volume, low VOC concentration exhaust streams, such as those from the spray booth. Six facilities with 11 top coating operations have demonstrated control of the clear coat spray booth and the topcoat curing oven to meet a topcoat limit of 0.62 kg VOC/l acs (5.20 lb VOC/gal acs). We estimated that this option would reduce VOC emissions from a typical topcoat operation by 110 tpy of VOC at a cost of $5,200 per ton of VOC reduced.

The second option considered by the EPA is based on facilities demonstrating control of the basecoat spray booth and/or the basecoat flash zone, as well as the clearcoat spray booth and topcoat oven to meet a topcoat operation limit of 0.42 kg VOC/l acs (3.53 lb VOC/gal acs). The add-on controls used by facilities demonstrating these emission limits (are the same as in the first option) include an include a thermal oxidizer, usually an RTO achieving 95 percent control of the captured emissions and a concentrator, such as a carbon adsorber or rotary carbon adsorber before the RTO. For this second option, the emissions from the basecoat spray booth and/or the basecoat flash zone would be sent to a concentrator before going to the RTO. This option is based on two facilities operating three coating lines and demonstrating control of the basecoat spray booth and/or flash zone, as well as the clearcoat booth and topcoat oven to meet a topcoat operation limit of 0.42 kg VOC/l acs (3.53 lb VOC/gal acs). We estimated that this option would reduce emissions from a typical topcoat operation by 160 tpy of VOC at a cost of $7,900 per ton of VOC reduced.

After consideration of the two topcoat options, the EPA is proposing to revise the VOC limit for the topcoat operation. The proposed VOC limit reflects the EPA's determination that, Option 2, the control the basecoat spray booth and/or the basecoat heated flash zone, as well as the clear coat booth and the topcoat oven with an RTO or a combination of a concentrator and RTO with the RTO achieving 95 percent control of the captured emissions represents the updated BSER for topcoat operations. The proposed revised standard will limit VOC emissions from topcoat operations to 0.42 kg VOC/l acs (3.53 lb VOC/gal acs). Option 2 would provide greater emission reductions than Option 1 and is cost-effective. This option also represents the lower range of emission limits for facilities using solvent borne basecoat and clearcoats and this emission limit matches the presumptive BACT emission limit for 2020 identified by EPA Region 5.

In conclusion, based on our review, we are proposing in a new subpart (subpart MMa) a VOC emission limit of 0.42 kg VOC/l acs (3.53 lb VOC/gal acs) to reflect control of the basecoat booth and/or the basecoat flash off zone, as well as the clear coat booth and the topcoat oven with an RTO or a combination of a concentrator/RTO, with the RTO achieving 95 percent control of the captured emissions for topcoat operations that commence construction, reconstruction, or modification after May 18, 2022.

d. What are the proposed requirements for fugitive emissions of VOC?

CAA section 111(h)(1) authorizes the Administrator to promulgate ''a design, equipment, work practice, or operational standard, or combination thereof'' if in his or her judgment, ''it is not feasible to prescribe or enforce a standard of performance.'' CAA section 111(h)(2) provides the circumstances under which prescribing or enforcing a standard of performance is ''not feasible,'' such as, when the pollutant cannot be emitted through a conveyance designed to emit or capture the pollutant, or when there is no practicable measurement methodology for the particular class of sources.

The ALDT NSPS does not currently regulate fugitive VOC emissions from the storage, mixing, and conveying of VOC-containing materials that include the coatings, thinners, and cleaning materials used in, and waste materials generated by the prime coat, guide coat and topcoat operations. It also does not regulate fugitive VOC emissions from the cleaning and purging of equipment. The results of our review did not identify any ALDT facilities demonstrating control of these fugitive VOC emissions. The fugitive VOC emissions are from various sources and activities located throughout the ALDT facility and are generally released into the ambient air inside the facility. Further, it would not be cost effective for the purposes of this analysis due to the major capital investment associated with routing these VOC emissions from various locations throughout the ALDT facility to capture and control systems.

The sources of fugitive VOC emissions include containers for VOC-containing materials used for wipe down operations and cleaning; spills of VOC-containing materials; the cleaning of spray booth interior walls, floors, grates and spray equipment; the cleaning of spray booth exterior surfaces; and the cleaning of equipment used to convey the vehicle body through the surface coating operations. The ALDT NESHAP lists work practices to minimize fugitive organic HAP emissions in § 63.3094. The work practices include VOC minimizing practices for these sources including: The use of low-VOC and no-VOC alternatives; controlled access to VOC-containing cleaning materials, capture and recovery of VOC-containing materials, use of high-pressure water systems to clean equipment in the place of VOC-containing materials; masking of spray booth interior walls, floors, and spray equipment to protect from over spray; and use of tack wipes or solvent moistened wipes. The ALDT NESHAP work practice provisions require sources to develop and implement a work practice plan to minimize VOC emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by the prime coat, guide coat and topcoat operations. They also require sources to develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with the prime coat, guide coat and topcoat operations.

The EPA considers the ALDT NESHAP work practices to reflect the best technological system of continuous emission reduction for controlling fugitive emissions of VOC from these sources. We are therefore proposing to include in ALDT NSPS subpart MMa work practices that are consistent with the work practice provisions in the ALDT NESHAP subpart IIII to limit fugitive VOC emissions. We anticipate that adding these work practice requirements to the ALDT NSPS would cause minimal impacts to the industry because we expect all 44 ALDT facilities identified in this action will be subject to the ALDT NESHAP subpart IIII by 2022. Facilities demonstrating compliance with the ALDT NESHAP subpart IIII work practice provisions will be in compliance with these same requirements in the revised ALDT NSPS subpart MMa.

e. What are the proposed requirements for new guide coat and topcoat operations for plastic bodies?

Operations for surface coating of plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines are exempt from the current ALDT NSPS, subpart MM. See 40 CFR 60.390(b). This exemption was added to subpart MM as a result of two public comments and data documenting the significant problems

associated with the use of waterborne topcoats on plastic substrates due to the high temperature required to cure the waterborne coatings (Automobile and Light Duty Truck Surface Coating Operations, Background Information for Promulgated Standards, EPA–450/3–79–030b, September 1980, Comment 2.1.9, page 2–8). Although the ALDT NSPS did not specify the use of waterborne coatings (facilities could use any coating as long as they met the standard), the exemption was added. The intent of the original ALDT NSPS was to regulate VOC emissions from the primary ALDT surface coating operations (prime coat, guide coat and topcoat operations) in an assembly plant regardless of the vehicle body substrate.

During our review of facility operating permits, we found that one facility uses waterborne and solvent borne coatings on all-plastic bodies and is not subject to the ALDT NSPS due to this exemption. The surface coating operations for all-plastic bodies for this facility are instead subject to state VOC RACT rules for the surface coating of plastic parts (discussed below). At all other ALDT facilities the state VOC RACT rules apply to the coating of plastic components coated separately from the vehicle body. Therefore, we are proposing a revision of the plastic parts exemption so that ALDT NSPS subpart MMa applies to the coating of all vehicle bodies, including all-plastic vehicle bodies to be consistent with the original intent of the ALDT NSPS and the requirements for other ALDT facilities.

One facility has adequately demonstrated the surface coating of all-plastic bodies with waterborne coatings, so the exemption for coating all-plastic bodies is no longer justified. Therefore, we are proposing in a new subpart (subpart MMa) removal of the exemption for surface coating of all-plastic vehicle bodies for operations that commence construction, reconstruction, or modification after May 18, 2022. The EPA is aware of only one plant that currently coats all-plastic vehicle bodies and does not expect this facility to become subject to the revised ALDT NSPS over the next 8 years due to recent upgrades made to the plant's surface coating operations.

In this proposal, we are not proposing to remove the exemption with respect to the coating of plastic components coated separately from the vehicle body. Plastic components coated separately from the vehicle body are subject to state VOC RACT rules in accordance with recommendations in the 2008 CTG for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003, September 2008) and to the Plastic Parts and Products Surface Coating NESHAP (40 CFR, subpart PPPP) which regulates the organic HAP.

f. What are the proposed testing, monitoring, and reporting requirements for new ALDT surface coating operations?

The new source performance standards developed under CAA section 111 are required to reflect the best system of emission reduction under conditions of proper operation and maintenance. For the NSPS review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the performance standards. As discussed above, other regulatory actions pursuant to CAA sections 112 and CAA 183(e) were promulgated subsequent to the ALDT NSPS that also regulate or otherwise address emissions from ALDT surface coating operations. These regulatory actions include: The 2004 ALDT NESHAP (40 CFR part 63, subpart IIII (69 FR 2262, April 26, 2004), the 2008 ALDT CTG (EPA–453/R–08–006, September 2008) and the 2020 RTR amendments to the ALDT NESHAP (85 FR 41100, July 8, 2020). Although the resulting ALDT NESHAP and ALDT CTG requirements cannot be compared directly to the ALDT NSPS due to the differences in CAA authorities, pollutants, emission limits and format, they apply to the same coating materials and operations and were therefore considered in our review. All ALDT facilities are currently subject to and demonstrating compliance with the ALDT NESHAP requirements.

As a result of our review, we are proposing to revise the ALDT NSPS to match the ALDT NESHAP capture and control devices and the associated testing, monitoring, and reporting requirements. We anticipate that adding these requirements to the ALDT NSPS will cause minimal impacts to the industry because all ALDT facilities are currently subject to and demonstrating compliance with the ALDT NESHAP subpart IIII. These requirements will provide for more robust testing, monitoring and reporting than is required in the current ALDT NSPS, and will align the ALDT NSPS and the ALDT NESHAP testing, monitoring and reporting requirements. Facilities that are in compliance with the ALDT NESHAP requirements will also be in compliance with the revised ALDT NSPS MMa requirements, as discussed in the sections below. The proposed updates are described briefly below.

Capture and Control Devices

The ALDT NSPS subpart MM lists thermal incineration and catalytic incineration as the technologies used to meet to the VOC emission limits. In addition, subpart MM requires temperature measurement devices to be installed, calibrated and maintained according to accepted practice and manufacturer's specifications. To make the revised NSPS subpart MMa consistent with the ALDT NESHAP subpart IIII, we are proposing to update the list of control devices and the corresponding control device compliance requirements so that the revised NSPS MMa would contain the same list of control devices and corresponding requirements as the ALDT NESHAP subpart IIII. In addition to thermal and catalytic oxidizers, we are proposing to add the control devices and operating limits listed in Table 1 to subpart IIII of Part 63—Operating Limits for Capture Systems and Add-On Control Devices (ALDT NESHAP Table 1) to the revised NSPS MMa. The additional control devices include regenerative carbon adsorbers, condensers, and concentrators (including zeolite wheels and rotary carbon adsorbers). We are also proposing the addition of requirements for capture systems that are permanent total enclosures and that are not permanent total enclosures to the revised NSPS MMa to match the ALDT NESHAP requirements.

Operating Limits and Monitoring Provisions

The ADLT NSPS subpart MM requires affected sources using control devices to meet the VOC limits to install, calibrate, maintain, and operate temperature measurement devices. It also specifies the accuracy of the temperature and requires each temperature measurement device be equipped with a recording device so that a permanent record is produced. We are proposing to revise the provisions for establishing the operating limits for the existing control devices and to add these provisions for new control devices in the revised NSPS subpart MMa to match the ALDT NESHAP requirements at (a) § 63.3093 and NESHAP Subpart IIII Table 1, (b) the provisions for establishing control device operating limits in § 63.3167, and (c) the provisions for the continuous monitoring system installation, operation and maintenance of control devices in § 63.3168. Facilities demonstrating compliance with these ALDT NESHAP subpart IIII requirements will be in compliance

with these same requirements in the revised NSPS subpart MMa.

Performance Testing

The ADLT NSPS requires an initial performance test to be conducted in accordance with § 60.8(a) and thereafter for each calendar month for each prime coat, guide coat, and topcoat operation to demonstrate compliance with the ALDT NSPS subpart MM. Each monthly calculation is considered to be a performance test to demonstrate compliance with the ALDT NSPS emission limits. The ALDT NSPS also requires the reporting of additional data for the initial performance test or in subsequent performance tests at which destruction efficiency is determined. The ALDT NSPS does not, however, require subsequent performance tests in addition to the initial performance test to determine destruction efficiency. We are proposing to add the periodic testing provisions for control devices to determine destruction efficiency once every five years to match the ALDT NESHAP requirements. Periodic performance tests are used to establish or evaluate the ongoing destruction efficiency of the control device and establish the corresponding operating parameters, such as temperature, which can vary as processes change or as control devices age. We are proposing to align the revised NSPS subpart MMa performance testing requirements with requirements that match the provisions for initial performance testing under the ALDT NESHAP subpart IIII in § 63.3160 and periodic performance testing in § 63.3160(c)(3) to apply to the control devices used for compliance with the emission limits in the revised subpart MMa. We are also proposing to add the control device efficiency requirements to the revised NSPS subpart MMa to match the ALDT NESHAP requirements at section § 63.3166. ALDT facilities demonstrating compliance with these ALDT NESHAP subpart IIII requirements will be in compliance with these same requirements in the revised NSPS subpart MMa.

Transfer Efficiency

The NSPS subpart MM provides default transfer efficiency (TE) values representing the overall transfer system efficiency according to the method of coating application and the capture and collection of purge solvent used during color changes. We are proposing to revise these requirements in revised subpart MMa to provide a more accurate measure of transfer efficiency and to make these requirements consistent with the ALDT NESHAP subpart IIII requirements. We are proposing that sources determine the transfer efficiency for each guide coat and topcoat coating using ASTM D5066–91 (Reapproved 2017) or the guidelines presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–453/R–08–002, September 2008. We are also proposing the requirements for transfer efficiency testing on representative coatings and for representative spray booths as described in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–453/R–08–002, September 2008. We are also proposing that sources can assume 100-percent transfer efficiency for prime coat EDP operations. ALDT facilities demonstrating compliance with these ALDT NESHAP subpart IIII requirements will be in compliance with these same requirements in the revised NSPS subpart MMa.

Reference Methods and Procedures

The ALDT NSPS subpart MM lists EPA methods used in compliance calculations as EPA Methods 1, 2, 3, 4, 24, and 25 of 40 CFR part 60, appendix A and ''any equivalent or alternative methods.'' In order to meet the new testing, monitoring, and reporting provisions described above, additional the EPA reference methods and alternative methods (for IBR) are proposed for the revised NSPS MMa to be consistent with the ALDT NESHAP compliance calculations. In addition to these EPA methods and alternative methods we are proposing to add other methods specific to automotive coatings and the panel testing procedure in *Appendix A to Subpart IIII of Part 63—Determination of Capture Efficiency of Automobile and Light-Duty Truck Spray Booth Emissions From Solvent-borne Coatings Using Panel Testing* to the ALDT NSPS. The complete list of EPA methods is listed in section VIII. I. of this preamble and the VCS we propose to IBR are listed in Section VII of this preamble.

B. What other actions are we proposing, and what is the rationale for those actions?

a. Proposal of NSPS Subpart MMa Without Startup, Shutdown, Malfunction Exemptions

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. The NSPS general provisions in 40 CFR 60.8(c) currently exempt non-opacity emission standards during periods of startup, shutdown, and malfunction. We are proposing in subpart MMa in section 40 CFR 60.392a specific requirements that override the general provisions for SSM. We are also proposing that the standards in subpart MMa apply at all times, and more specifically during periods of SSM, to match the SSM provisions in the ALDT NESHAP 40 CFR 63 subpart IIII.

The EPA has attempted to ensure that the general provisions we are proposing to override are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We specifically seek comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods. We discussed the need for alternative standards with industry representatives during the recent development of amendments to ALDT NESHAP 40 CFR 63 subpart IIII and no issues were identified and there are no data indicating problems during periods of startup and shutdown. The primary control devices used to control VOC emissions for the ALDT surface coating operations are carbon adsorbers, concentrators and thermal oxidizers, which are effective control devices for controlling emissions during startup and shutdown events. With regard to malfunctions, these events are described in the following paragraph.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 60.2). The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA

section 111 or in case law requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, nothing in section 111 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting section 111 standards of performance. The EPA's approach to malfunctions in the analogous circumstances (setting ''achievable'' standards under section 112) has been upheld as reasonable by the D.C Circuit in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (DC Cir. 2016).

b. Electronic Reporting

The EPA is proposing that owners and operators of ALDT surface coating operations subject to the current and new NSPS at 40 CFR part 60, subparts MM and MMa submit electronic copies of required performance test reports and the excess emissions and continuous monitoring system performance and summary reports, through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [3] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance test results be submitted in portable document format (PDF) using the WebFIRE Template and Test Quality Rating Tool, also available at the ERT website or an electronic file consistent with the xml schema on the ERT website. In addition, an electronic copy (PDF) copy of the entire report documenting the source test must be attached to the ERT. For the excess emissions and continuous monitoring system performance and summary reports, the proposed rules require that owners and operators use the appropriate spreadsheet template to submit information to CEDRI once the spreadsheet template is uploaded and forms for the reports have been available in CEDRI for 90 days. A draft version of the templates for the semiannual reports is under development, and we are working to complete them by proposal. Revisions to the template may be needed to reflect revisions to the proposed NSPS subpart MMa rule text in response to public comments. A draft version of the revised template will be included in the final rule docket for this action.[4] Similar to the template development efforts for the ALDT NESHAP 40 CFR 63 subpart IIII, the EPA will consider clarifying the draft template, as needed. The EPA specifically requests comments on the content, layout, and overall design of the template(s).

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are (1) outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to enable owners and operators to remain in compliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [5] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [6] developed in response to the White House's Digital Government Strategy.[7] For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

c. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

The effective date of the final rule will be the promulgation date, as specified in CAA section 111(b)(1)(B)). Affected sources that commence construction, reconstruction, or modification after May 18, 2022, must comply with all requirements of 40 CFR part 60 subpart MMa, no later than the effective date of the final rule or upon startup, whichever is later.

Affected facilities for which construction, modification, or reconstruction began on or before May 18, 2022 must comply with all

[3] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[4] See the EPA form number 5900–581, A*LDT_Surface_Coating_Subpart_MM_Excess_Emissions_CMS_Performance_Report_Template.xlsx,* and EPA form number 5900–582, A*LDT_Surface_Coating_Subpart MMa_Excess_Emissions_CMS_Performance_Report_Template.xlsx,* available in Docket ID No. EPA–HQ–OAR–2021–0664.

[5] *EPA's Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[6] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[7] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

requirements of 40 CFR part 60 subpart MM no later than the effective date of the final rule or upon startup, whichever is later.

V. Summary of Cost, Environmental, Energy, and Economic Impacts

A. What are the air quality impacts?

The new NSPS subpart MMa, would achieve an estimated average of 331 tpy reduction of allowable VOC emissions per facility compared to that of the current NSPS subpart MM. Over the first 8 years after the rule is final, we expect an average of two new, reconstructed, or modified facilities per year, or sixteen new affected facilities. We estimate a total VOC emission reduction of 4,160 tpy in the eighth year after the rule is final, compared to the current NSPS subpart MM.

We estimate an average GHG emissions production of 4,474 mtCO2e per year per facility. Over the first 8 years after the rule is final, we expect an average of two new, reconstructed, or modified facilities per year, or sixteen new affected facilities. We estimate a total GHG emission production of 71,584 mtCO2e in the eighth year after the rule is final.

We did not evaluate the environmental impacts of other pollutants such as hydrocarbons (other than VOC), NO_X, and CO emitted by control devices due to the combustion of natural gas as fuel or from the generation of electricity.

B. What are the energy impacts?

The energy impacts associated with the electricity and natural gas consumption associated with the operation of control devices to meet proposed NSPS subpart MMa include an estimated average electricity consumption of 2.54 million kwh per year per facility and an estimated average natural gas consumption of 48.8 million scf per year per facility compared to that of the current NSPS subpart MM. Over the first 8 years after the rule is final, we expect an average of two new, reconstructed, or modified facilities per year, or sixteen new affected facilities. We estimate a total electricity consumption of 40.6 million kwh and a total natural gas consumption of 780.8 million scf in the eighth year after the rule is final, compared to the current NSPS subpart MM.

C. What are the cost impacts?

We estimate that the annual capital cost of controls to comply with the NSPS subpart MMa will be $6.3 million per year per new facility, or $12.6 million per year for two new facilities in each year in the 8-year period after the rule is final.

We estimate that the average annual cost of controls to comply with the NSPS subpart MMa will be $1.71 million per year per facility, or $3.42 million for two new facilities in each year in the 8-year period after the rule is final. The total cumulative annual costs (including annualized capital costs and O&M costs) of complying with the rule in the eighth year after the rule is final would be $27.34 million.

We estimate that the average cost of the periodic testing of control devices once every 5 years to comply with the NSPS MMa will be $57,000 per facility, or $114,000 for two facilities in the fifth year after the rule is final.

D. What are the economic impacts?

The EPA conducted an economic impact analysis and small business screening assessment for this proposal, as detailed in the memorandum, *Economic Impact Analysis and Small Business Screening Assessment for Proposed Revisions and Amendments to the New Source Performance Standards for Automobile and Light Duty Truck Surface Coating Operations,* which is available in the docket for this action. The economic impacts of the proposal are estimated by comparing total annualized compliance costs to revenues at the ultimate parent company level. This is known as the cost-to-revenue or cost-to-sales test. This ratio provides a measure of the direct economic impact to ultimate parent owners of facilities while presuming no impact on consumers. We estimate that none of the ultimate parent owners potentially affected by this proposal will incur total annualized costs of greater than one percent of their revenues if they modify or reconstruct the relevant portions of their facility and become subject to the requirements of this proposed rule.

While one existing facility is currently owned by a small entity, that facility is in the process of being sold to a company that is not a small entity. Furthermore, that facility is already in compliance with the requirements in this proposed rule, so even if it were to modify or reconstruct and become subject to the proposed subpart MMa, it is not anticipated that it would incur any additional costs as a result. Because the coatings processes are large operations at automobile and light duty truck manufacturing facilities, it is not anticipated that any affected facilities that have exited their initial startup phase would be classified as small entities. Therefore, no economic impacts are expected for small entities. Furthermore, it is assumed that any new entrant into the industry would have sales similar to at least the smallest current ultimate owner, so it is not anticipated that any new ultimate owner would face costs of greater than one percent of sales.

Therefore, the economic impacts are anticipated to be low for affected companies and the industries impacted by this proposal, and there will not be substantial impacts on the markets for affected products. The costs of the proposal are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

E. What are the benefits?

As described above, the proposed NSPS subpart MMa would result in lower VOC emissions compared to the existing NSPS subpart MM. The new NSPS subpart MMa would also require that the standards apply at all times, which includes SSM periods. We are also proposing several compliance assurance requirements which will ensure compliance with the new NSPS subpart MMa and help prevent noncompliant emissions of VOC. Furthermore, the proposed requirements in the new NSPS subpart MMa to submit reports and test results electronically will improve monitoring, compliance, and implementation of the rule.

Reducing emissions of VOC is expected to help reduce ambient concentrations of ground level ozone and increase compliance with the National Ambient Air Quality Standards (NAAQS) for ozone. A quantitative analysis of the impacts on the NAAQS in the areas located near ALDT plants would be technically complicated, resource intensive and infeasible to perform in the time available and would not represent the impacts for future new ALDT sources because the locations of new sources are currently unknown. For these reasons, we did not perform a quantitative analysis. However, currently available health effects evidence supporting the December 23, 2020, final decision for the ozone NAAQS continues to support the conclusion that ozone can cause difficulty breathing and other respiratory system effects. For people with asthma, these effects can lead to emergency room visits and hospital admissions. Exposure over the long term may lead to the development of asthma. People most at risk from breathing air containing ozone include people with asthma, children, the elderly, and outdoor workers. For children, ozone in

outdoor air increases their risk of asthma attacks while playing, exercising, or engaging in strenuous work activities outdoors.

F. What analysis of environmental justice did we conduct?

Consistent with the EPA's commitment to integrating environmental justice in the Agency's actions, and following the directives set forth in multiple Executive Orders as well as CAA section 111(b)(1)(B), the Agency has carefully considered the impacts of this action on communities with environmental justice concerns. This action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. Therefore, the locations of the new, modified, and reconstructed sources at ALDT surface coating facilities are not known. In addition, it is not known which of the existing ALDT surface coating facilities will modify or reconstruct the affected sources in the future. Therefore, the demographic analysis was conducted for 46 existing facilities (45 operating and one is due to start construction in May 2022) to characterize the demographics in areas where the facilities are currently located. The demographic analysis shows that the percent minority population in close proximity to these facilities is higher than the national average (49 percent versus 40 percent). Within minorities, the percent of the population that is African American is significantly higher than the national average (27 percent versus 12 percent). All other minority demographics are similar to or below the corresponding national averages. The percent of people living below the poverty level is significantly higher than the national average (22 percent versus 13 percent). The percent of people over 25 without a high school diploma is also higher than the national average (15 percent versus 12 percent). The percentage of the population living in linguistic isolation is similar to the national average (6 percent versus 5 percent). The EPA particularly noted community impacts and concerns in some areas of the country that have a larger percentage of sources. A large percentage of the sources in the Auto and Light Duty Truck Surface Coating source category are located in EPA Region 5 states and of those states, most sources are located in the state of Michigan. Most, if not all the counties where these sources are located are designated as ozone non-attainment areas. For this reason, we engaged with EPA Region 5 and the state of Michigan as part of this rulemaking.

The EPA expects that this ALDT NSPS review will result in significant reductions of VOC emissions from the affected sources. The new emission limits proposed for this action reflects the best system of emission reduction demonstrated and establishes a new more stringent standard of performance for the primary sources of VOC emissions from the source category. The EPA expects the proposed requirements in subpart MMa will result in significant reductions of VOC emissions for communities surrounding new, modified and reconstructed affected sources compared to the existing rule in subpart MM and will result in less VOC emissions for communities located in areas designated as ozone non-attainment areas. These areas are already overburdened by pollution, and are often minority, low-income and indigenous communities. Following is a more detailed description of how the Agency considers environmental justice (EJ) in the context of regulatory development, and specific actions taken to address EJ concerns for this action.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal government actions (86 FR 7009, January 20, 2021). The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [8] The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

When practicable, the EPA begins its environmental justice analysis by first identifying stakeholders who may be disproportionately impacted by the pending regulatory action. An assessment of populations in close proximity to sources helps the EPA in considering outreach and engagement strategies. For this action, we performed a demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

As stated above, this action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. Therefore, the locations of the construction of new Auto and Light Duty Truck Surface Coating affected sources are not known. In addition, it is not known which of the existing Auto and Light Duty Truck Surface Coating affected sources will be modified or reconstructed in the future. Therefore, the demographic analysis was conducted for all 46 existing facilities as a characterization of the demographics in areas where these facilities are now located.

The results of the demographic analysis (Table 1) indicate that, for populations within 5 km of the 46 facilities in the source category, the percent minority population (being the total population minus the white population) is higher than the national average (49 percent versus 40 percent). Within minorities, the percent of the population that is African American is significantly higher than the national average (27 percent versus 12 percent). All other minority demographics are at or below the corresponding national averages. The percent of people living below the poverty level is significantly higher than the national average (22 percent versus 13 percent). The percent of people over 25 without a high school diploma is also higher than the national average (15 percent versus 12 percent). The percentage of the population living in linguistic isolation is similar to the national average (6 percent versus 5 percent).

At a 50 km radius of sources, the results of the demographic analysis (Table 1) indicate that the percent minority population is similar to the national average (41 percent versus 40 percent). Within minorities, the percent African American (17 percent) and the percent Other/Multiracial (9 percent) populations are higher than the national averages (12 percent and 8 percent, respectively). All other minority demographics are below the

[8] *https://www.epa.gov/environmentaljustice.*

corresponding national averages. The percent of people living below the poverty level, the percent of people over 25 without a high school diploma, and the percent living in linguistic isolation are similar to or below the national average.

A summary of the demographic assessment performed for facilities affected by the NSPS for ALDT surface coating operations is included as Table 1. The methodology and the results of the demographic analysis are presented in a technical report titled, *Analysis of Demographic Factors for Populations Living Near Automobile and Light-Duty Truck Surface Coating NSPS Source Category Operations,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2021–0664).

TABLE 1—DEMOGRAPHIC ASSESSMENT RESULTS FOR THE AUTOMOBILE AND LIGHT-DUTY TRUCK SURFACE COATING NSPS SOURCE CATEGORY OPERATIONS ****

Demographic group	Nationwide *	Population within 50 km of 46 existing facilities	Population within 5 km of 46 existing facilities
Total Population	328,016,242	42,618,391	1,696,179
White and Minority by Percent			
White	60%	59%	51%
Minority **	40%	41%	49%
Minority by Percent			
African American	12%	17%	27%
Native American	0.7%	0.2%	0.2%
Hispanic or Latino *** (includes white and nonwhite)	19%	15%	13%
Other and Multiracial	8%	9%	9%
Income by Percent			
Below Poverty Level	13%	13%	22%
Above Poverty Level	87%	87%	78%
Education by Percent			
Over 25 and without a High School Diploma	12%	12%	15%
Over 25 and with a High School Diploma	88%	88%	85%
Linguistically Isolated by Percent			
Linguistically Isolated	5%	4%	6%

* The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey five-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts within 5 km and 50 km of all facilities are based on the 2010 Decennial Census block populations.

** Minority population is the total population minus the white population.

*** To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

**** This action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. Therefore, the locations of the construction of new Auto and Light Duty Truck Surface Coating facilities are not known. In addition, it is not known which of the existing Auto and Light Duty Truck Surface Coating facilities will be modified or reconstructed in the future. Therefore, the demographic analysis was conducted for the 46 existing facilities as a characterization of the demographics in areas where these facilities are now located.

The EPA expects that this action will result in significant reductions of VOC emissions from the affected sources for all communities, including communities potentially overburdened by pollution, which are often minority, low-income and indigenous. The proposed new NSPS will have beneficial effects on air quality and public health both locally and regionally. Further, this rulemaking complements other actions already taken by the EPA to reduce emissions and improve health outcomes for overburdened and underserved communities.

VI. Request for Comments

We solicit comments on all aspects of this proposed action, especially the proposed emission limits, the cost-effectiveness estimates, and other impacts. We also encourage commenters to include data to support their comments. We invite comments on the benefits summary and welcome any data on these or other impacts associated with VOCs from ALDT sources. We are also interested in comments and information related to the practices, processes, and control technologies to reduce VOC emissions from surface coating operations at ALDT facilities.

VII. Incorporation by Reference

The EPA proposes to amend the 40 CFR 60.17 to incorporate by reference the following VCS:

- ANSI/ASME, PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]'' is a manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas and is proposed as an alternative to EPA Method 3B manual portion only and not the instrumental portion.

• ASTM D6420–18, ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' is a test method that can be used to determine the mass concentration of VOC and is proposed as an alternative to EPA Method 18 only when the target compounds are all known, and the target compounds are all listed in ASTM D6420–18 as measurable. This method should not be used for methane and ethane (because atomic mass is less than 35) and it should never be specified as a total VOC method.

• ASTM Method D6093–97 (Reapproved 2016) ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' is a test method that can be used to determine the percent volume of nonvolatile matter in clear and pigmented coatings and is proposed as an alternative to EPA Method 24.

• ASTM D2369–10 (Reapproved 2015)e1, ''Test Method for Volatile Content of Coatings'' is a test method that allows for more accurate results for multi-component chemical resistant coatings and is proposed as an alternative to EPA Method 24.

• ASTM Method D2697–03 (Reapproved 2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' is a test method that can be used to determine the volume of nonvolatile matter in clear and pigmented coatings and is proposed as an alternative to EPA Method 24.

• The ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–453/R–08–002, September 2008, are procedures for combining analytical VOC content and formulation solvent content and are proposed as an alternative to EPA Method 24.

• ASTM D1475–13 ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' is a test method that can be used to determine the density of coatings and the updated version of the test method clarifies units of measure and reduces the number of determinations required.

• ASTM D5965–02 (Reapproved 2013) test method A or test method B ''Standard Test Methods for Specific Gravity of Coating Powders'' are test methods that can be used to determine the specific gravity of powder coatings.

• ASTM D5066–91 (Reapproved 2017) ''Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis'' is a procedure to measure the transfer efficiency of spray coatings.

• ASTM D5087–02 ''Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)'' is a procedure to measure solvent loading for the heated flash zones and bake ovens for waterborne coatings.

• ASTM D6266–00a (Reapproved 2017) ''Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)'' is also a procedure to measure solvent loading for heated flash zones and bake ovens for waterborne coatings.

ASTM D5066–91 (Reapproved 2017) is cited in the proposed rule as an acceptable procedure to measure the transfer efficiency of spray coatings. ASTM D5087–02 and ASTM D6266–00a (Reapproved 2017) are cited in the proposed rule as acceptable procedures to measure solvent loading (similar to capture efficiency) for the heated flash zone for waterborne basecoats and for bake ovens. Currently, no EPA methods are available to measure transfer efficiency or solvent release potential from automobile and light-duty truck coatings in order to determine the potential solvent loading from the coatings used.

We also identified VCS ASTM D2111–10 (2015), ''Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures'' as an acceptable alternative to EPA Method 24. This ASTM standard can be used to determine the density for the specific coatings (halogenated organic solvents) cited using Method B (pycnometer) only (as in ASTM 1217). We are not proposing this VCS because ALDT surface coating operations do not use halogenated organic solvents, based on our knowledge of the industry.

EPA–453/R–08–002 is available online at *https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-guidelines-and-standards-solvent-use-and-surface* (see Automobile and Light Duty Truck CTG) or through *www.regulations.gov* under EPA–HQ–OAR–2008–0413–0080.

ANSI/ASME, PTC 19.10–1981 is available from the American Society of Mechanical Engineers (ASME), Two Park Avenue, New York, NY 10016–5990, Telephone (800) 843–2763. See *www.asme.org*.

The ASTM standards are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *www.astm.org*.

VIII. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review

Although this action is not economically significant, it was submitted to the Office of Management and Budget (OMB) for review. An economic impact analysis (EIA) was prepared for this action and is available in the docket. Any changes made in response to OMB recommendations have also been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this action have been submitted for approval to OMB under the PRA.

The Information Collection Request (ICR) document for MM has been assigned EPA ICR number 1064.20 and the ICR document for MMa has been assigned EPA ICR number 2714.01. You can find a copy of both ICR in the ALDT NSPS Docket No. EPA–HQ–OAR–2021–0664, and they are briefly summarized here. Each ICR is specific to information collection associated with the ALDT surface coating source category, either through the revised 40 CFR part 60, subpart MM or through the new 40 CFR part 60, subpart MMa.

For the revised 40 CFR part 60, subpart MM, as part of the ALDT NSPS review, the EPA is proposing to include the requirement for electronic submittal of reports.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of ALDT surface coating operations subject to 40 CFR part 60, subpart MM.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MM).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 44 respondents per year will be subject to the NSPS and no new respondents will be subject to the NSPS (40 CFR part 60, subpart MM).

Frequency of response: The frequency of responses varies depending on the burden item. Responses include onetime review of rule requirements, reports of performance tests, and semiannual excess emissions and

continuous monitoring system performance reports.

Total estimated burden: The average annual recordkeeping and reporting burden for the 44 responding facilities to comply with all of the requirements in the new NSPS subpart MMa over the 3 years after the rule is final is estimated to be 506 hours (per year). The average annual burden to the Agency over the 3 years after the rule is final is estimated to be 152 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the ALDT facilities is $46,000 in labor costs in the first 3 years after the rule is final. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $7,800.

For the new 40 CFR part 60, subpart MMa, as part of the ALDT NSPS review, the EPA is proposing to revise the emission limit requirements and is adding new work practices for new, modified and reconstructed sources. We are proposing changes to the testing, recordkeeping and reporting requirements associated with 40 CFR part 60, subpart MMa, in the form of requiring performance tests every 5 years and including the requirement for electronic submittal of reports. This information is being collected to assure compliance with 40 CFR part 60, subpart MMa.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of ALDT surface coating operations subject to 40 CFR part 60, subpart MMa.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MMa).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 6 respondents per year will be subject to the NSPS (40 CFR part 60, subpart MMa).

Frequency of response: The frequency of responses varies depending on the burden item. Responses include onetime review of rule requirements, reports of performance tests, and semiannual excess emissions and continuous monitoring system performance reports.

Total estimated burden: The average annual recordkeeping and reporting burden for the 6 responding facilities to comply with all of the requirements in the new NSPS subpart MMa over the 3 years after the rule is final is estimated to be 1,663 hours (per year). The average annual burden to the Agency over the 3 years after the rule is final is estimated to be 207 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the ALDT facilities is $151,600 in labor costs in the first 3 years after the rule is final. The average annual capital and operation and maintenance (O&M) cost is $151,000 in the first 3 years after the rule is final. The total average annual cost is $302,600 in the first 3 years after the rule is final. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $10,600.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than June 17, 2022. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. Details of this analysis are presented in the *Economic Impact and Small Business Analysis for the Automobile and Light Duty Truck Surface Coating NSPS Review,* which is available in the docket for this action. The annualized costs associated with the requirements in this action for the affected small entities is described in section IV.C. above.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on Federally recognized Tribal governments, nor preempt Tribal law, and does not have substantial direct effects 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, as specified in E.O. 13175 (65 FR 67249, November 9, 2000). No tribal facilities are known to be engaged in the industry that would be affected by this action nor are there any adverse health or environmental effects from this action. However, the EPA conducted a proximity analysis for this source category and found that six auto and light duty truck assembly plants are located within 50 miles of Tribal lands. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA will offer consultation with Tribal officials during the development of this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant regulatory action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement 51 Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. Therefore, the EPA conducted searches through the Enhanced NSSN Database managed by the American National Standards Institute (ANSI) to determine if there are

voluntary consensus standards (VCS) that are relevant to this action. The Agency also contacted VCS organizations and accessed and searched their databases. Searches were conducted for the EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 24, 25, and 25A of appendix A to 40 CFR part 60; EPA Methods 204, 204A, 204B, 204C, 204D, 204E, and 204F of appendix M to 40 CFR part 51; and EPA Method 311 of appendix A to 40 CFR part 63. As a result of this search, no applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A, 204B, 204C, 204D, 204E and 204F.

During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA considered it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this rule. This review requires significant method validation data which meets the requirements of the EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS. As a result, the EPA proposes to amend 40 CFR 60.17 to incorporate by reference (IBR) the following VCS:

- ANSI/ASME, PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]'' as an alternative to EPA Method 3B manual portion only and not the instrumental portion.
- ASTM D6420–18, ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' as an alternative to EPA Method 18 only when the target compounds are all known, and the target compounds are all listed in ASTM D6420–18 as measurable. This method should not be used for methane and ethane (because atomic mass is less than 35) and it should never be specified as a total VOC method.
- ASTM Method D6093–97 (Reapproved 2016) ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' as an alternative to EPA Method 24.
- ASTM D2369–10 (Reapproved 2015) e1, ''Test Method for Volatile Content of Coatings'' as an alternative to EPA Method 24.
- ASTM Method D2697–03 (Reapproved 2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' as an alternative to EPA Method 24.
- Guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–453/R–08–002, September 2008, as an alternative to EPA Method 24.

In addition to the VCS identified for EPA reference methods, we propose to amend 40 CFR 60.17 to IBR the following ASTM methods for ALDT coatings:

- ASTM D1475–13 ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products.''
- ASTM D5965–02 (Reapproved 2013) test method A or test method B ''Standard Test Methods for Specific Gravity of Coating Powders.''
- ASTM D5066–91 (Reapproved 2017) ''Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis.''
- ASTM D5087–02 ''Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement).''
- ASTM D6266–00a (Reapproved 2017) ''Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement).''

Additional information for the VCS search and determinations can be found in the memorandum, *Voluntary Consensus Standard Results for Review of Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations,* which is available in the docket for this action.

Under 40 CFR 60.8(b) and 60.13(i) of subpart A of the General Provisions, a source may apply to the EPA to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the final rule or any amendments. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section V.C and V.E of this preamble. As discussed in section V.E of this preamble, we performed a demographic analysis for the automobile and light duty truck surface coating source category, which is an assessment of the proximity of individual demographic groups living close to the facilities (within 50 km and within 5 km). Results of the demographic analysis indicate that the following groups above the national average: African Americans, People Living Below the Poverty Level, and People without a High School Diploma.

Michael S. Regan,

Administrator.

[FR Doc. 2022–09590 Filed 5–17–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, 62, and 70

[EPA–R08–OAR–2021–0732; FRL–9829–01–R8]

Approval of Clean Air Act Operating Permit Program Revisions; Negative Declaration of Existing Hospital/Medical/Infectious Waste Incinerators and Administrative Updates; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the ''Agency'') is proposing full approval of revisions to the South Dakota operating permit program for stationary sources under the Clean Air Act (CAA), title V (the ''title V program'') and a Clean Air Act (CAA) section 111(d)/129 negative declaration for incinerators subject to the Hospital/Medical/Infectious Waste Incinerators (HMIWI) Emissions Guidelines. EPA is proposing this action in accordance with the CAA.

DATES: Written comments must be received on or before June 17, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–

OAR–2021–0732, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Carson Coate, Air and Radiation Division, EPA, Region 8, Mail code 8ARD, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (406) 457–5042, email address: *coate.carson@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. In the Final Rules section of this **Federal Register**, EPA is approving South Dakota's submissions and making administrative updates as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA contemplates no further action. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule of the same title which is located in the Final Rules section of this **Federal Register**.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Beverages, Carbon monoxide, Chemicals, Coal, Electric power plants, Fluoride, Gasoline, Glass and glass products, Grains, Greenhouse gases, Hazardous substances, Household appliances, Industrial facilities, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metals, Motor vehicle pollution, Natural gas, Nitrogen dioxide, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Rubber and rubber products, Sewage disposal, Steel, Sulfur oxides, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Intergovernmental relations, Mercury, Radioactive materials, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Industrial facilities, Intergovernmental relations, Methane, Ozone, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Waste treatment and disposal.

40 CFR Part 70

Environmental protection, Air pollution control, Intergovernmental relations, Title V.

Dated: May 8, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–10222 Filed 5–17–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 16–271; DA 22–484; FR ID 86428]

Wireless Telecommunications Bureau Seeks Comment on Compliance Gap Drive Testing for Alaska Plan Participants

AGENCY: Federal Communications Commission.

ACTION: Proposed compliance with Alaska Plan; request for comments.

SUMMARY: The Wireless Telecommunications Bureau requests comment on requiring mobile-provider participants of the Alaska Plan subject to the drive test requirement to submit new drive-test data if they fail to demonstrate compliance with their approved performance plan.

DATES: Comments are due on or before June 1, 2022 and replies are due on or before June 8, 2022.

ADDRESSES: Interested parties may file comments on or before the date indicated above and must reference WC Docket No. 16–271. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://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.

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 FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Matthew Warner of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, *Matthew.Warner@fcc.gov,* (202) 418–2419.

SUPPLEMENTARY INFORMATION: This is a summary of the ''Request for Comment'' portion of the Bureau's Alaska Plan Drive Test Order and Request for Comment, adopted on May 5, 2022, and released on May 5. 2022. The summary of the Order portion is published elsewhere in this issue of the **Federal Register**. The full text of this document is available for public inspection on the Commission's website at: *https://www.fcc.gov/document/alaska-drive-test-order-and-request-comment.*

I. Introduction

1. In the Order portion of this document, the Wireless Telecommunications Bureau (Bureau) adopts a drive-test model and parameters for the drive tests that are required of certain mobile providers participating in the Alaska Plan. The Bureau will use these drive-test data to determine whether mobile providers that receive more than $5 million in annual support for the deployment of mobile voice and broadband service in remote areas of Alaska have met their performance commitments. In the Request for Comment portion of this document, we seek comment on a proposal to require mobile-provider participants subject to the drive-test requirement to submit new drive-test data consistent with the drive-test model and parameters if they fail to meet a buildout milestone and later seek to cure a compliance gap.

II. Request for Comment

2. This Request for Comment seeks comment on an approach for mobile providers that receive more than $5 million annually from the Alaska Plan to address compliance gaps under § 54.320(d)(1) of the Commission's rules. Section 54.320(d)(1) establishes a framework to assess any compliance gaps for Alaska Plan mobile providers' commitments. To ensure that mobile providers receiving more than $5 million annually for the Alaska Plan have met their interim milestone commitments, the Commission will analyze the drive test data discussed in this Order, in addition to other data, to determine whether they have any compliance gaps and, if so, the extent of the compliance gap per commitment (*i.e.,* which compliance gap tier the mobile provider falls into). We seek comment on requiring these mobile providers to submit new drive-test data if they fail to demonstrate compliance with their approved performance plan by the five-year interim milestone.

3. To the extent that a mobile-provider participant subject to the drive-test requirement is shown through the results of the testing to have failed to meet its five-year performance requirement, and seeks to cure a compliance gap, we propose to require the provider to submit new drive-test data consistent with the Alaska Drive-Test Model we adopt today. Under this proposal, the provider would submit updated coverage data, including middle-mile data if applicable, whenever it seeks to improve its compliance gap tier until it has less than a 5% compliance gap. Commission staff then would provide new grid cells to test based on this updated coverage data. For example, if a provider that had a compliance gap of 30% (and is thus in Tier 3) reports that it reduced its compliance gap to 10%, which would warrant a move to Tier 1, then the provider would submit its updated coverage and middle-mile data to the Commission. Staff would provide the mobile-provider participant new grid cells to test, consistent with the mobile-provider participant's updated coverage data. The mobile-provider participant would need to provide new drive-test data consistent with the Alaska Drive-Test Model as verifying evidence that it has moved compliance tiers. For a mobile-provider participant with multiple frames (if there is a compliance gap for its fiber-based 4G LTE population, for example), it would need to provide supporting drive-test data for all affected frames. This would ensure that new compliance gaps are not created when other compliance gaps are reduced. We seek comment on this proposal. We also seek comment on whether we should adopt any additional requirements for retesting beyond what is required under the Alaska Drive-Test Model.

A. Digital Equity and Inclusion

4. Finally, as part of the Commission's continuing effort to advance digital equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, we invite comment on any equity-related considerations and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how these matters may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

III. Procedural Matters

A. Initial Regulatory Flexibility Certification

5. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

6. This Request for Comment seeks comment on the drive testing proposals required by the Alaska Plan for those wireless participants receiving more than $5 million in annual Alaska Plan support, excluding the smaller wireless participants that receive less than that in annual support. The proposals, if adopted, would apply to only two entities, one of which does not qualify as a small entity. Therefore, we certify that the proposals in this Request for Comment, if adopted, will not have a significant economic impact on a substantial number of small entities.

7. The Commission will send a copy of the Request for Comment, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

B. Ex Parte Presentations

8. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in

accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b) (47 CFR 1.1206(b)). In proceedings governed by rule 1.49(f) (47 CFR 1.49(f)) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

C. Filing Requirements

9. Comments. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document and must reference WC Docket No. 16–271. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://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, 35 FCC Rcd 2788 (2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

10. 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 FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

11. Additional Information. For additional information on this proceeding, contact Matthew Warner of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, *Matthew.Warner@fcc.gov,* (202) 418–2419.

IV. Ordering Clauses

12. *It is ordered* that, pursuant to the authority contained in Sections 1 through 4, 201, 254, 301, 303, 307, 309, 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201, 254, 301, 303, 307, 309, 332 and Sections 0.91, 0.131, 0.291, 0.311, 54.317, 54.320, and 54.321 of the Commission's rules, 47 CFR 0.91, 0.131, 0.291, 0.311, 54.317, 54.320, and 54.321, and the delegated authority contained in the Alaska Plan Order, 31 FCC Rcd 10139, 10160, 10166 through 67, paras. 67, 85, *notice is hereby given* of the proposals described and tentative conclusions in the Request for Comment.

13. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order and Request for Comment, including the Initial Regulatory Flexibility Certification and the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2022–10542 Filed 5–17–22; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 87, No. 96
Wednesday, May 18, 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

Farm Service Agency

[Docket ID FSA–2022–0004]

Notice of Funds Availability; Emergency Relief Program (ERP)

AGENCY: Farm Service Agency, USDA.

ACTION: Notification of funding availability.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice announcing ERP. ERP will provide assistance to producers for losses to crops, trees, bushes, and vines due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021. ERP assistance will be provided in two phases. This document provides the eligibility requirements, application process, and payment calculations for ERP Phase 1, which will provide payments for crop production losses and tree, bush, and vine losses calculated using certain data from previously issued crop insurance indemnities and Noninsured Crop Disaster Assistance Program (NAP) payments.

DATES:

Funding availability: Implementation will begin May 18, 2022.

Comment Date: We will consider comments on the Paperwork Reduction Act that we receive by: July 18, 2022.

ADDRESSES: We invite you to submit comments on the information collection request. You may submit comments by any of the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FSA–2022–0004. Follow the online instructions for submitting comments.
- *Mail, Hand-Delivery, or Courier:* Director, Safety Net Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250–0522. In your comment, specify the docket ID FSA–2022–0004.

All comments will be posted without change and publicly available on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tona Huggins; telephone: (202) 720–6825; email: *tona.huggins@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

Division B, Title I, of the Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. 117–43) provides $10 billion for necessary expenses related to losses of:

- Crops;
- Trees;
- Bushes; and
- Vines.

To be eligible for assistance, the loss must be a consequence of one of the following qualifying disaster events occurring in the 2020 or 2021 calendar years:

- Droughts;
- Wildfires;
- Hurricanes;
- Floods;
- Derechos;
- Excessive heat;
- Winter storms;
- Freeze, including a polar vortex;
- Smoke exposure; and
- Excessive moisture.

Losses due to drought are only eligible for assistance if any area within the county in which the loss occurred was rated by the U.S. Drought Monitor as having a D2 (severe drought) for eight consecutive weeks or a D3 (extreme drought) or higher level of drought intensity.

FSA is using the funding to assist producers who suffered eligible losses through several programs.[1] In this document, FSA is announcing ERP, which will assist producers who suffered losses of crops, trees, bushes, or vines due to qualifying disaster events. FSA will administer ERP in two phases:

- ERP Phase 1 will use a streamlined process with pre-filled application forms. It will provide payments for crop production losses and tree, bush, and vine losses in certain situations where data are already on file with FSA or the Risk Management Agency (RMA), as a result of the producer previously receiving a NAP payment or a crop insurance indemnity under certain crop insurance policies. This document provides the eligibility requirements, application process, and payment calculations for ERP Phase 1.
- ERP Phase 2 will provide payments for other eligible losses through a more traditional application process during which eligible producers will provide all data required to calculate a payment. FSA will announce ERP Phase 2 provisions and application period in a future **Federal Register** document.

Definitions

The definitions in 7 CFR parts 718 and 1400 apply to ERP, except as otherwise provided in this document. The following definitions also apply.

Administrative fee means the amount an insured paid for catastrophic risk protection, and additional coverage for each crop year as specified in the applicable crop insurance policy.

Average adjusted gross farm income means the average of the portion of the person or legal entity's adjusted gross income derived from farming, ranching, or forestry operations for the 3 taxable years preceding the most immediately preceding complete taxable year. The relevant tax years are:

(1) For the 2020 program year, 2016, 2017, and 2018;

(2) For the 2021 program year, 2017, 2018, and 2019; and

(3) For the 2022 program year,[2] 2018, 2019, and 2020.

Average adjusted gross income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity. The relevant tax years are:

[1] FSA previously announced ELRP on April 4, 2022 (87 FR 19465–19470). The Milk Loss Program and On-Farm Stored Commodity Loss Program will be announced in a future rule. These programs and ERP have the same funding source.

[2] The 2022 crop year is included because a qualifying disaster event occurring in the 2021 calendar year may have caused a loss of a crop during the 2022 crop year, based on how ''crop year'' is defined in the applicable crop insurance policy or NAP provisions.

(1) For the 2020 program year, 2016, 2017, and 2018;

(2) For the 2021 program year, 2017, 2018, and 2019; and

(3) For the 2022 program year, 2018, 2019, and 2020.

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

Bush means a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial market for human consumption, such as a blueberry bush. The definition does not cover nursery stock or plants that produce a bush after the normal crop is harvested.

Buy-up NAP coverage means NAP coverage at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Catastrophic coverage has the same meaning as in 7 CFR 1437.3.

Coverage level means the percentage determined by multiplying the elected yield percentage under a crop insurance policy or NAP coverage by the elected price percentage.

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

Crop insurance indemnity means the payment to a participant for crop losses covered under crop insurance administered by RMA in accordance with the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Crop year means:

(1) For insured crops, trees, bushes, and vines, the crop year as defined according to the applicable crop insurance policy; and

(2) For NAP-covered crops, the crop year as defined in 7 CFR 1437.3.

Deputy Administrator means the FSA Deputy Administrator for Farm Programs.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA, administered by RMA.

Historically underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

Income derived from farming, ranching, and forestry operations means income of an individual or entity derived from:

(1) Production of crops, specialty crops, and unfinished raw forestry products;

(2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;

(3) Production of farm-based renewable energy;

(4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;

(5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;

(6) Processing, packing, storing, and transportation of farm, ranch, forestry commodities including renewable energy;

(7) Feeding, rearing, or finishing of livestock;

(8) Payments of benefits, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(9) Sale of land that has been used for agricultural purposes;

(10) Payments and benefits authorized under any program made available and applicable to payment eligibility and payment limitation rules;

(11) Income reported on Internal Revenue Service (IRS) Schedule F or other schedule used by the person or legal entity to report income from such operations to the IRS;

(12) Wages or dividends received from a closely held corporation, and Interest Charge Domestic International Sales Corporation (IC–DISC) or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, or forestry activities as defined in this document; and

(13) Any other activity related to farming, ranching, and forestry, as determined by the Deputy Administrator.

Limited resource farmer or rancher means a farmer or rancher who is both of the following:

(1) A person whose direct or indirect gross farm sales, based on 2 years, did not exceed:

(a) $180,300 in each of the 2017 and 2018 calendar years for the 2020 program year;

(b) $179,000 in each of the 2018 and 2019 calendar years for the 2021 program year; or

(c) $189,200 in each of the 2019 and 2020 calendar years for the 2022 program year; and

(2) A person whose total household income was at or below the national poverty level for a family of four in each of the same two previous calendar years referenced in paragraph (1) of this definition. Limited resource farmer or rancher status can be determined using a website available through the Limited Resource Farmer and Rancher Online Self Determination Tool through National Resource and Conservation Service at *https://lrftool.sc.egov.usda.gov.*

For an entity to be considered a limited resource farmer or rancher, all members who hold an ownership interest in the entity must meet the criteria in paragraphs (1) and (2) of this definition.

NAP means the Noninsured Crop Disaster Assistance Program, which is authorized by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and regulations in 7 CFR part 1437.

NAP service fee means the fee the producer paid to obtain NAP coverage specified in 7 CFR 1437.7.

Ownership interest means to have either a legal ownership interest or a beneficial ownership interest in a legal entity. For the purposes of administering ERP, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity where members hold a legal ownership interest and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is considered to have a beneficial ownership interest in such legal entity.

Premium means the premium paid by the producer for crop insurance coverage or NAP buy-up coverage levels.

Program year means the crop year.

Qualifying disaster event means wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions.

Qualifying drought means an area within the county was rated by the U.S. Drought Monitor as having a drought intensity of D2 (severe drought) for eight consecutive weeks or D3 (extreme

drought) or higher level for any period of time during the applicable calendar year.

Related condition means damaging weather and adverse natural occurrences that occurred concurrently with and as a direct result of a specified qualifying disaster event. Related conditions include, but are not limited to:

- Excessive wind that occurred as a direct result of a derecho;
- Silt and debris that occurred as a direct and proximate result of flooding;
- Excessive wind, storm surges, tornados, tropical storms, and tropical depressions that occurred as a direct result of a hurricane; and
- Excessive wind and blizzards that occurred as a direct result of a winter storm.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

(1) American Indians or Alaskan Natives;

(2) Asians or Asian-Americans;

(3) Blacks or African Americans;

(4) Hispanics or Hispanic Americans;

(5) Native Hawaiians or other Pacific Islanders; and

(6) Women.

Specialty crops means fruits, tree nuts, vegetables, culinary herbs and spices, medicinal plants, and nursery, floriculture, and horticulture crops. This includes common specialty crops identified by USDA's Agricultural Marketing Service at *https://www.ams.usda.gov/services/grants/scbgp/specialty-crop* and other crops as designated by the Deputy Administrator.

Substantial beneficial interest (SBI) has the same meaning as specified in the applicable crop insurance policy. For the purposes of ERP Phase 1, Federal crop insurance records for ''transfer of coverage, right to indemnity'' are considered the same as SBIs.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial market for human consumption, such as a maple tree for syrup, or papaya or orchard tree for fruit. It includes immature trees that are intended for commercial purposes. Nursery stock, banana and plantain plants, and trees used for pulp or timber are not considered eligible trees.

Unit means the unit structure as defined under the applicable crop insurance policy for insured crops or in 7 CFR 1437.9 for NAP-covered crops.

USDA means the U.S. Department of Agriculture.

U.S. Drought Monitor means the system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at *http://droughtmonitor.unl.edu*.

Veteran farmer or rancher means a farmer or rancher who has served in the Armed Forces (as defined in 38 U.S.C. 101(10) [3]) and:

(1) Has not operated a farm or ranch for more than 10 years; or

(2) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2) [4]) during the most recent 10-year period.

For an entity to be considered a veteran farmer or rancher, at least 50 percent of the ownership interest must be held by members who have served in the Armed Forces and meet the criteria in paragraph (1) or (2) of this definition.

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Nursery stock, perennials that are normally propagated as annuals such as tomato plants, biennials such as strawberry plants, and annuals such as pumpkin, squash, cucumber, watermelon, and other melon plants, are excluded from the term vine.

ERP Phase 1

ERP Phase 1 will provide a streamlined application process for eligible losses during the 2020, 2021, or 2022 crop years [5] for which a producer had:

- A Federal Crop Insurance policy that provided coverage for crop production losses or tree losses related to the qualifying disaster events and received an indemnity [6] for a crop and unit, excluding perennial crops with an intended use of grazing; livestock policies; nursery; forage seeding; and Margin Protection Plan policies purchased without a base policy; or
- NAP coverage and received a NAP payment for a crop and unit.

ERP Phase 1 excludes losses to aquacultural species that were compensated under the Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program (generally referred to as ELAP) to avoid providing duplicate benefits for losses already at least partially compensated for by ELAP.

The applicable crop insurance policies and NAP provide payments to producers for crop, tree, bush, and vine losses due to eligible causes of loss as defined respectively in the producer's crop insurance policy or NAP, which includes crop production losses and tree losses due to the qualifying disaster events eligible for ERP. Where such an overlap has been identified, RMA and FSA are using certain data submitted by producers for crop insurance or NAP purposes to calculate a producer's eligible loss under ERP Phase 1. The ERP calculation is intended to compensate producers for a percentage of that loss determined by the applicable ERP factor, which varies based on the producer's level of crop insurance or NAP coverage, as described later in this document.

Producers who did not qualify for assistance under Phase 1 who experienced losses to crops, trees, bushes, and vines, will be addressed under ERP Phase 2. Other losses to crops, trees, bushes, and vines will also be addressed under ERP Phase 2.[7] ERP Phase 2 will address situations where a producer's records at RMA do not match the records at FSA. Further, producers who apply for payment under ERP Phase 1 may also apply under ERP Phase 2; however, payments under ERP

[3] The term ''Armed Forces'' means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

[4] The term ''veteran'' means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

[5] The 2022 crop year is included because a qualifying disaster event occurring in the 2021 calendar year may have caused a loss of a crop during the 2022 crop year, based on how ''crop year'' is defined in the applicable crop insurance policy or NAP provisions.

[6] For purposes of this program, indemnity does not include cottonseed endorsement payments, downed rice endorsement payments, sugarcane crop replacement endorsement payments, replant payments, or raisin reconditioning payments.

[7] Losses covered under ERP Phase 2 may include crop quality losses, losses for which the producer did not have an applicable crop insurance policy or NAP coverage for the crop and unit, and losses for which the producer had an applicable crop insurance policy or NAP coverage but the loss was not significant enough to result in a crop insurance indemnity or NAP payment or was otherwise excluded from ERP Phase 1.

Phase 2 will take into account any amounts received for the crop and unit under ERP Phase 1. ERP Phase 2 provisions will be specified in a future **Federal Register** document.

Eligibility

To be eligible for payment under ERP Phase 1, a producer must have suffered a crop, tree, bush, or vine loss that was caused, in whole or in part, by a qualifying disaster event. Because under certain policies the amount of loss due to a qualifying disaster event cannot be separated from the amount of loss caused by other eligible causes of loss as defined by the applicable crop insurance policy or NAP, the ERP Phase 1 payment will be based on the producer's loss as long as those losses are in whole or in part caused by a qualifying disaster event.

In addition, consistent with other FSA disaster assistance programs, a producer must be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of ERP means ''lawful alien'' as defined in 7 CFR 1400.3;

(3) Partnership consisting of solely of citizens of the United States or resident aliens;

(4) Corporation, limited liability company, or other organizational structure organized under State law consisting solely of citizens of the United States or resident aliens; or

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Eligible crops include all crops for which crop insurance or NAP coverage was available, except for crops intended for grazing.

Application Process

FSA and RMA will identify the producers who meet the criteria described above to apply for ERP Phase 1. For each of those producers, FSA will generate an FSA–520, Emergency Relief Program (ERP) Phase 1 Application, with certain items pre-filled with information already on file with USDA. A separate application form will be generated for each applicable program year. FSA expects to begin mailing application forms in May to producers who received crop insurance indemnities, and to begin mailing forms to producers who received NAP payments later in the summer. FSA will mail application forms for policy holders with 2021 crop year coverage under Stacked Income Protection (STAX), Supplemental Coverage Option (SCO), Enhanced Coverage Option (ECO), Margin Protection (MP), and Area Risk Protection Insurance (ARPI) when data become available.

For producers who received a crop insurance indemnity for eligible policies, the pre-filled application will include the producer's physical State and county codes, pay unit numbers, crops, and gross indemnities. While the majority of crop insurance policies may cover an eligible crop loss, a small number do not and are not eligible for ERP, including livestock policies and margin policies. Even if a policy is included in ERP Phase 1, the producer will need to certify that their payment under any such policy was in whole or in part due to a crop loss related to a qualifying disaster event. For producers who received a NAP payment, the pre-filled applications will include the producer's administrative State and county codes, unit numbers, crops, pay groups, and gross NAP payments. FSA will also pre-fill the calculated ERP Phase 1 payment amounts, prior to any payment reductions.[8] Producers cannot alter the data in these pre-filled items. If a producer believes that any information that has been pre-filled is incorrect, the producer should contact their crop insurance agent for insured crops or their FSA county office for NAP-covered crops.

Receipt of a pre-filled application form is not a confirmation that the producer is eligible to receive an ERP Phase 1 payment. In order to receive a payment, the producer must certify that their crop insurance indemnity or NAP payment on which the ERP Phase 1 payment will be based was due, in whole or in part, to a crop production loss or a loss of trees, bushes, or vines caused by a qualifying disaster event. Producers are responsible for reviewing the list of qualifying disaster events, and if a loss was due to drought, producers must also ensure that the county where the crop and unit was located meets the definition of ''qualifying drought.'' FSA will provide a factsheet and other materials to provide examples and more details on the qualifying disaster events to assist producers. In addition, producers must also certify that they will meet the requirement to purchase crop insurance or NAP coverage for the next 2 available crop years, as described later in this document.

The portion of the form for producers who had crop insurance will also list the primary policy holder and all producers with an SBI who have a record established with FSA. If one or more producers with an SBI had a share in a crop, the primary policy holder must update the application to show the share in the crop for each of those producers in addition to the primary policy holder. If determined eligible, any payments will be issued to the primary policy holder and to any producers with an SBI who have a share in the crop according to their shares in the crop entered on the application. To receive a payment, each person or entity that is listed as having a share of the ERP Phase 1 payment for a crop and unit must sign the application and agree to purchase crop insurance or NAP coverage for that crop and unit, as described later in this document. If multiple crops and units are listed on an application, producers may agree to purchase crop insurance or NAP coverage for only some of the crops and units; an ERP Phase 1 payment will be issued only for those crops and units for which the producer agrees to meet that requirement.

Producers, including any producers with an SBI who have a share in a crop as indicted on the application, must also have the following forms on file with FSA by within 60 days of the ERP Phase 1 deadline announced by the Deputy Administrator to receive an ERP Phase 1 payment:

- Form AD–2047, Customer Data Worksheet;
- Form CCC–902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- Form CCC–901, Member Information for Legal Entities (if applicable); and
- A highly erodible land conservation (sometimes referred to as HELC) and wetland conservation certification as provided in 7 CFR part 12 (form AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification) for the producer and applicable affiliates.

Many producers, especially if they have participated in FSA programs recently, will already have these forms on file with FSA. Producers who are unsure of whether a form is on file may contact their local FSA service center. Contact information for service centers is available at *https://www.farmers.gov/working-with-us/service-center-locator*.

In addition to the forms listed above, certain producers will also need to submit the following forms to qualify for an increased payment rate or payment limitation, as described later in this document:

[8] Similar to other disaster programs administered by FSA, payment reductions will be made to account for payment limitation, lack of compliance with highly erodible land conservation and wetland conservation requirements, and prorating of payments to stay within available funding as discussed later in this document.

- Form CCC–860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, applicable for the program year or years for which the producer is applying for ERP; [9] or
- Form FSA–510, Request for an Exception to the $125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification, for a legal entity and all members of that entity, for each applicable program year.

FSA will continue to accept forms CCC–860 and FSA–510 from producers for the purpose of establishing eligibility for an increased payment rate or payment limitation until the deadline announced by FSA.

Payment Calculation

RMA and FSA will calculate ERP Phase 1 payments based on the data on file with the agencies at the time of calculation. The ERP Phase 1 payment calculation for a crop and unit will depend on the type and level of coverage obtained by the producer. Each calculation will use an ERP factor based on the producer's level of crop insurance or NAP coverage, as specified in the following tables.

	ERP factor (percent)
Crop Insurance Coverage Level:	
Catastrophic coverage	75.0
More than catastrophic coverage but less than 55 percent	80.0
At least 55 percent but less than 60 percent	82.5
At least 60 percent but less than 65 percent	85.0
At least 65 percent but less than 70 percent	87.5
At least 70 percent but less than 75 percent	90.0
At least 75 percent but less than 80 percent	92.5
At least 80 percent	95.0
NAP Coverage Level:	
Catastrophic coverage	75.0
50 percent	80.0
55 percent	85.0
60 percent	90.0
65 percent	95.0

When determining the ERP factors, analysis was conducted to ensure that payments do not exceed available funding and, in aggregate across all producers, do not exceed 90 percent of losses, as required by the Extending Government Funding and Delivering Emergency Assistance Act. The difference between the ERP payment factor for crop insurance and NAP is due to differences in the available coverage levels. Crop insurance is available at the catastrophic coverage level (50 percent production coverage of 55 percent of the price) and buy-up coverage levels (50 percent to 85 percent of the production for 100 percent of the price). NAP is limited by law to a maximum of 65 percent buy-up coverage. For both NAP and crop insurance, the ERP payment factor for the catastrophic and maximum buy-up levels are 75 percent and 95 percent respectively, with the ERP factors stair-stepping for the buy-up options in-between as shown in the tables above. The Extending Government Funding and Delivering Emergency Assistance Act provides that payments to producers who did not have crop insurance or NAP coverage cannot exceed 70 percent of their loss; therefore, the lowest ERP factor for producers who had crop insurance or NAP is set at 75 percent. Payment limits and other reductions will reduce ERP payments, further lowering the percent of losses covered.

For crop insurance, RMA will use the producer's data that is already on file, which provides the necessary information to determine the producer's amount of loss. Crop insurance provides financial assistance for crop losses due to specified natural disasters and uses a producer's data to calculate a payment based on the type of crop insurance coverage elected by the producer. As previously discussed, ERP is intended to compensate producers for a percentage of their loss determined by the applicable ERP factor based on the level of crop insurance coverage purchased; therefore, RMA will calculate each producer's loss consistent with the loss procedures for the type of coverage purchased [10] but using the ERP factor. This calculated amount would then be adjusted by subtracting out the net crop insurance indemnity, which is equal to the producer's gross crop insurance indemnity already received for those losses minus service fees and premiums.

For NAP-covered crops, FSA will use the producer's crop production or inventory data that is already on file, which provides the necessary information to determine the producer's amount of loss. NAP provides financial assistance for crop losses due to specified natural disasters and uses a producer's crop production or inventory data to calculate a payment based on the level of NAP coverage elected by the producer. As previously discussed, ERP is intended to compensate producers for a percentage of loss determined by the applicable ERP factor based on their NAP coverage level; therefore, FSA will perform a calculation that is consistent with the NAP payment calculation for the crop and unit, as provided in 7 CFR part 1437, but using the ERP factor in the table above applicable to the producer's NAP coverage level as the applicable guarantee in those calculations. For example, the guarantee for a producer that had purchased 60 percent NAP coverage would be

[9] A producer who has filed form CCC–860 certifying their status as a socially disadvantaged, beginning, or veteran farmer or rancher for a prior program year is not required to submit a subsequent certification of their status for a later program year because a producer's status as socially disadvantaged would not change in different years, and their certification as a beginning or veteran farmer or rancher includes the relevant date needed to determine for what programs years the status would apply. Because a producer's status as a limited resource farmer or rancher may change annually depending on the producer's direct and indirect gross farm sales, those producers must submit form CCC–860 for each applicable program year.

[10] For example, ERP for Area Risk Protection Insurance (ARPI) and STAX is based on area-wide (for example, county) production losses.

adjusted and recalculated based on a 90 percent ERP factor. The calculated amount using the ERP factor would then be adjusted by subtracting the net NAP calculated payment, which is equal to the producer's gross NAP payment already received by the producer minus service fees and premiums.[11] For NAP, actual value equals the dollar value of the crop and unit at the time of loss as determined by USDA. For example, a producer had a crop that had a value of $150,000 and a 50 percent loss, resulting in a loss of $75,000. They had a NAP coverage level of 60 percent, so their NAP guarantee was $90,000. Their NAP guarantee of $90,000 minus the $75,000 value of the crop that was not lost is equal to a net NAP calculated payment of $15,000. The new ERP guarantee based on the ERP factor of 90 percent is calculated to be $135,000. The ERP guarantee of $135,000 minus the $75,000 value of the crop that was not lost is equal to $60,000, which is reduced by the net NAP calculated payment amount of $15,000, resulting in a calculated ERP Phase 1 payment of $45,000.

Similar to other FSA disaster assistance programs like ELAP and other recent ad hoc disaster programs, historically underserved farmers and ranchers will receive an increase to their ERP Phase 1 payment that is equal to 15 percent of the amount calculated as described above. For example, if a historically underserved farmer or rancher's calculated amount is $1,000, their ERP Phase 1 payment will be $1,150. To qualify for the increased payment amount, a historically underserved farmer or rancher must have certified their status on form CCC–860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification. FSA will issue ERP Phase 1 payments as applications are processed and approved. If a producer files form CCC–860 after their ERP Phase 1 payment is issued but before the deadline to be announced by FSA, FSA will process the form CCC–860 and issue the additional payment amount.

A total of $10 billion was allocated to certain disaster relief programs. Congress allocated $750 million for livestock assistance, with the first phase of the Emergency Livestock Relief Program (ELRP) already paying over $560 million. ERP Phase 1 payments for crops covered by crop insurance will be prorated by 75 percent to ensure that total ERP payments, including payments under ERP Phase 2, do not exceed the available funding. ERP Phase 1 payments for NAP-covered crops will not be prorated due to the significantly smaller NAP portfolio that by its nature only covers smaller acreages and specialty crops that are not covered by crop insurance.

Payment Limitation

The payment limitation for ERP Phase 1 is determined by the person's or legal entity's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, a person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than $125,000 in payments for specialty crops and $125,000 in payment for all other crops under ERP (for Phase 1 and Phase 2 combined) for a program year if their average adjusted gross farm income is less than 75 percent of their average AGI the three taxable years preceding the most immediately preceding complete tax year. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities and the participant provides the required certification and documentation, as discussed below, the person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to:

- $900,000 for each program year for specialty crops; [12] and
- $250,000 for each program year for all other crops.

The relevant tax years for establishing a producer's AGI and percentage derived from farming, ranching, or forestry related activities are:

- 2016, 2017, and 2018 for program year 2020;
- 2017, 2018, and 2019 for program year 2021; and
- 2018, 2019, and 2020 for program year 2022.

To receive more than $125,000 in ERP payments for a program year, producers must submit form FSA–510, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification. If a producer requesting the increased payment limitation is a legal entity, all members of that entity must also complete form FSA–510 and provide the required certification according to the direct attribution provisions in 7 CFR 1400.105, ''Attribution of Payments.'' If a legal entity would be eligible for the increased payment limitation based on the legal entity's average AGI from farming, ranching, or forestry related activities but a member of that legal entity either does not complete a form FSA–510 and provide the required certification or is not eligible for the increased payment limitation, the payment to the legal entity will be reduced for the limitation applicable to the share of the ERP Phase 1 payment attributed to that member. FSA will issue ERP Phase 1 payments as applications are processed and approved. If a producer files form FSA–510 and the accompanying certification after their ERP Phase 1 payment is issued but before the deadline announced by FSA, FSA will process the form FSA–510 and issue the additional payment amount.

A payment made to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility.

Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

- First level of ownership—any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first level or payment legal entity; [13]
- Second level of ownership—any payment made to a first-level legal entity that is owned in whole or in part by another legal entity (referred to as a second-level legal entity) will be attributed to the second-level legal entity in proportion to the ownership of

[11] The gross NAP payment is the amount calculated according to 7 CFR part 1437, prior to any payment reductions for reasons including, but not limited to, sequestration, payment limitation, and the applicant or member of an applicant that is an entity exceeding the average AGI limitation.

[12] The Extending Government Funding and Delivering Emergency Assistance Act provides that in the case of specialty crops or high value crops, as determined by the Secretary, the Secretary shall impose payment limitations consistent with 7 CFR 760.1507(a)(2), which specified that a producer could receive up to $900,000 if not less than 75 percent of the average adjusted gross income of the person or legal entity was average adjusted gross farm income. USDA is continuing to evaluate how to define ''high value crops'' and will address those crops during ERP Phase 2.

[13] The ''first level or payment legal entity'' means that the payment entity will have a reduction applied, and if the payment entity happens to be a joint venture, that reduction is applied to the first level, or highest level, for payments. The ''first level or payment legal entity'' is the highest level of ownership of the applicant to whom payments can be attributed or limited. If the applicant is a business type that does not have a limitation or attribution, the reduction is applied to the first level, but if the business type can have the reduction applied directly to it, then the limitation applies.

the second-level legal entity in the first-level legal entity; if the second-level legal entity is owned in whole or in part by a person, the amount of the payment made to the first-level legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-level legal entity by the person;

- Third and fourth levels of ownership—except as provided in the second level of ownership bullet above and in the fourth level of ownership bullet below, any payments made to a legal entity at the third and fourth levels of ownership will be attributed in the same manner as specified in the second level of ownership bullet above; and
- Fourth-level of ownership—if the fourth level of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-level or payment legal entity in the amount that represents the indirect ownership in the first level or payment legal entity by the fourth-level legal entity.

Payments made directly or indirectly to a person who is a minor child will not be combined with the earnings of the minor's parent or legal guardian.

A producer that is a legal entity must provide the names, addresses, ownership share, and valid taxpayer identification numbers of the members holding an ownership interest in the legal entity. Payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest, at the first through fourth levels of ownership in the business structure, is not provided to FSA.

If an individual or legal entity is not eligible to receive ERP Phase 1 payments due to the individual or legal entity failing to satisfy payment eligibility provisions, the payment made either directly or indirectly to the individual or legal entity will be reduced to zero. The amount of the reduction for the direct payment to the producer will be commensurate with the direct or indirect ownership interest of the ineligible individual or ineligible legal entity. Like other programs administered by FSA, payments made to an Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), will not be subject to payment limitation.

Requirement To Purchase Crop Insurance or NAP Coverage

All producers who receive ERP Phase 1 payments, including those receiving a payment based on tree, bush, or vine crop insurance policies, are statutorily required to purchase crop insurance, or NAP coverage where crop insurance is not available, for the next 2 available crop years, as determined by the Secretary. Participants must obtain crop insurance or NAP, as may be applicable:

- At a coverage level equal to or greater than 60 percent for insurable crops; or
- At the catastrophic level or higher for NAP crops.

Availability will be determined from the date a producer receives an ERP payment, and may vary depending on the timing and availability of crop insurance or NAP for a producer's particular crops. The final crop year to purchase crop insurance or NAP coverage to meet the second year of coverage for this requirement is the 2026 crop year.

In situations where crop insurance is unavailable for a crop, an ERP participant must obtain NAP coverage. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with an AGI in amount greater than $900,000 is not eligible to participate in NAP; however, producers with an AGI greater than $900,000 are eligible for ERP. To reconcile this restriction in the 1985 Farm Bill and the requirement to obtain NAP or crop insurance coverage, ERP participants may meet the purchase requirement by purchasing Whole-Farm Revenue Protection (WFRP) crop insurance coverage, if eligible, or they may pay the applicable NAP service fee despite their ineligibility for a NAP payment. In other words, the service fee must be paid even though no NAP payment may be made because the AGI of the person or entity exceeds the 1985 Farm Bill limitation. The crop insurance and NAP coverage requirements are specific to the crop and county (which is the county where the crop is physically located for insured crops and the administrative county for NAP-covered crops) for which ERP Phase 1 payments are paid. This means that a producer is required to purchase crop insurance or NAP coverage for the crop in the county for which the producer was issued an ERP Phase 1 payment. Producers who receive an ERP Phase 1 payment that was calculated based on an indemnity under a Pasture, Rangeland, and Forage (PRF); Annual Forage; or WFRP policy must purchase the same type of policy or a combination of individual policies for the crops that had covered losses under ERP to meet the linkage requirement. Producers who receive a payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this document, and who fail to obtain the 2 years of crop insurance or NAP coverage required as specified in this document must refund all ERP Phase 1 payments for that crop in that county with interest from the date of disbursement. Producers who were paid under ERP Phase 1 for a crop in a county, but do not plant that crop in that county in a year for which this requirement applies, are not subject to the crop insurance or NAP purchase requirement for that year.

Provisions Requiring Refund to FSA

In the event that any ERP Phase 1 payment resulted from erroneous information reported by the producer or if the producer's data are updated after RMA or FSA calculate a producer's ERP Phase 1 payment, the ERP Phase 1 payment will be recalculated and the producer must refund any excess payment to FSA, including interest to be calculated from the date of the disbursement to the producer. If FSA determines that the producer intentionally misrepresented information used to determine the producer's ERP Phase 1 payment amount, the application will be disapproved and the producer must refund the full payment to FSA with interest from the date of disbursement. All persons with a financial interest in a legal entity receiving payments are jointly and severally liable for any refund, including related charges, which is determined to be due to FSA for any reason. Any required refunds must be resolved in accordance with debt settlement regulations in 7 CFR part 3.

General Provisions

Applicable general eligibility requirements, including recordkeeping requirements and required compliance with HELC and Wetland Conservation provisions, are similar to those for the previous ad hoc crop disaster programs and current permanent disaster programs.

General requirements that apply to other FSA-administered commodity programs also apply to ERP, including compliance with the provisions of 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation,'' and the provisions of 7 CFR 718.6, which address ineligibility for benefits for offenses involving controlled substances. Appeal regulations in 7 CFR parts 11 and 780 and equitable relief and finality provisions in 7 CFR part 718, subpart D, apply to determinations under ERP. As described above, ERP Phase 1 payments are calculated using data on file with RMA and FSA at the

time of calculation. Producers who receive an ERP Phase 1 application and disagree with the calculated payment amount or data used in the calculation may apply for ERP Phase 2, which will allow them to provide their data to FSA through a traditional application process.

Participants are required to retain documentation in support of their application for 3 years after the date of approval. All information provided to FSA for program eligibility and payment calculation purposes, including certification that a producer suffered a loss due to a qualifying disaster event, is subject to spot check. Participants receiving ERP Phase 1 payments or any other person who furnishes such information to USDA must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

Applicants have a right to a decision in response to their application. If an applicant files a late ERP Phase 1 application, the application is subject to the following conditions:

- A late ERP application will be considered a request to waive the deadline.
- Requests to waive or modify program provisions are at the discretion of the Deputy Administrator. The Deputy Administrator has the authority to waive or modify application deadlines and other requirements or program provisions not specified in law in cases where the Deputy Administrator determines it is (1) equitable to do so and (2) where the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of ERP.
- Applicants who request to waive or modify ERP provisions do not have a right to a decision on those requests.
- The Deputy Administrator's refusal to exercise discretion on requests to waive or modify ERP provisions will not be considered an adverse decision and is, by itself, not appealable.

Any payment under ERP will be made without regard to questions of title under State law and without regard to any claim or lien. The regulations governing offsets in 7 CFR part 3 apply to ERP payments.

If any person who would otherwise be eligible to receive a payment dies before the payment is received, payment may be released as specified in 7 CFR 707.3. Similarly, if any person or legal entity who would otherwise have been eligible to apply for a payment dies or is dissolved, respectively, before the payment is applied for, payment may be released in accordance with this document if a timely application is filed by an authorized representative. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment. Eligibility of such participant will be determined, as it is for other participants, based upon ownership share and risk in producing the crop.

In either applying for or participating in ERP, or both, the producer is subject to laws against perjury (including, but not limited to, 18 U.S.C. 1621). If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in ERP, or both, then the producer may be found to be guilty of perjury. Except as otherwise provided by law, if guilty of perjury the applicant may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or outside the United States.

For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under ERP but only as to beneficiaries who, as a condition of the waiver, agree to apply the ERP payments to reduce the amount of the judgment lien.

In addition to any other Federal laws that apply to ERP, the following laws apply: 15 U.S.C. 714; and 18 U.S.C. 286, 287, 371, and 1001.

Paperwork Reduction Act Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection request associated with ERP. After the 60-day period ends, the information collection request will be submitted to the Office of Management and Budget (OMB) for a 3-year approval to cover ERP information collection. To start the ERP information collection approval, prior to publishing this notice, FSA received emergency approval from OMB for 6 months. The emergency approval covers ERP information collection activities.

Title: ERP.

OMB Control Number: 0560–0309.

Type of Request: New Collection.

Abstract: FSA will make payments to eligible producers who suffered losses to crops, trees, bushes, and vines due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021. This request includes both ERP Phase 1, which uses a streamlined application process for producers whose data is already on file with FSA or RMA, and ERP Phase 2, which will use a traditional application process during which producers will provide the information required to calculate a payment.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses. The estimated average time per response is rounded to 3 decimal places instead of showing all 7 decimal places, so the calculation based on the numbers shown below is not exact.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.176 hours per response to include the time for reviewing instructions, searching for information, gathering and maintaining the data, and completing and reviewing the collection of information.

Type of Respondents: Individuals or households, businesses or other for profit farms.

Estimated Annual Number of Respondents: 505,000.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 505,000.

Estimated Average Time per Response: 0.176 hours.

Estimated Total Annual Burden on Respondents: 88,650.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; or

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). ERP is authorized by the Extending Government Funding and Delivering Emergency Assistance Act. The intent of ERP Phase 1 is to provide payments to producers who suffered eligible crop, tree, bush, and vine losses due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, and qualifying drought, and related conditions occurring in calendar years 2020 and 2021.

The limited discretionary aspects of the program (for example, determining payment limitations) were designed to be consistent with established FSA disaster programs. As such, the Categorical Exclusions found at 7 CFR part 799.31 apply, specifically 7 CFR 799.31(b)(6)(iv) and (vi) (that is, § 799.31(b)(6)(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) Safety net programs administered by FSA). No Extraordinary Circumstances (7 CFR 799.33) exist. As such, FSA has determined that the implementation of ERP and the participation in ERP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing,[14] to which this document applies is 10.964—Emergency Relief Program.

USDA Non-Discrimination Policy

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

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

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

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

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2022–10628 Filed 5–17–22; 8:45 am]

BILLING CODE 3410–05–P

[14] See *https://sam.gov/content/assistance-listings.*

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas 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 Kansas Advisory Committee (Committee) will hold a series of meeting(s) via web conference on, May 26, 2022; June 9, 2022 and June 23, 2022 at 12:00 p.m. Central Time. The purpose of the meetings is for the committee to discuss potential topics and panelists for the upcoming briefing(s).

DATES: The meeting will be held on:

- Thursday, May 26, 2022 at 12:00 p.m.–1:00 p.m. Central Time
- Thursday, June 9, 2022 at 12:00 p.m.–1:00 p.m. Central Time
- Thursday, June 23, 2022 at 12:00 p.m.–1:00 p.m. Central Time

https://civilrights.webex.com/civilrights/j.php?MTID=m5f3e3516a1d9b8db382795f2452d782a or Join by phone: 800–360–9505, USA Toll Free Access code: 2763 733 5933

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937

SUPPLEMENTARY INFORMATION: Members of the public may 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 David Barreras at *dbarreras@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,

Kansas 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
II. Chair's Comments
IV. Committee Discussion
V. Next Steps
VI. Public Comment
VII. Adjournment

Supervisory Chief, Regional Programs Unit.

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of pending expiration of Committee member appointment terms.

Dated: May 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–10695 Filed 5–17–22; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–1–2022]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina Authorization of Production Activity, BMW Manufacturing Company, LLC (Passenger Motor Vehicles), Spartanburg, South Carolina

On January 13, 2022, BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 38A, in Spartanburg, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 3761, January 25, 2022). On May 13, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: May 13, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–10683 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–80–2022]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Application for Subzone Dantzler Trade, Inc., Toa Baja, Puerto Rico

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting subzone status for the facility of Dantzler Trade, Inc., located in Toa Baja, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 12, 2022.

The proposed subzone (22.15 acres) is located at Road 865, Km. 5.5, Candelaría Arenas Ward, Toa Baja, Puerto Rico. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 7.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 27, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 12, 2022.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: May 12, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–10644 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Order Temporarily Denying Export Privileges

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;
Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;
Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates and P.O. Box 52404 Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;
Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France;
Sirjanco Trading LLC, P.O. Box 8709, Dubai, United Arab Emirates;
Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates;
Mehdi Bahrami, Mahan Airways-Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey;
Al Naser Airlines, a/k/a al-Naser Airlines, a/k/a Al Naser Wings Airline, a/k/a Alnaser Airlines and Air Freight Ltd., Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq and Al Amirat Street, Section 309, St. 3/H.20, Al Mansour, Baghdad, Iraq and P.O. Box 28360, Dubai, United Arab Emirates and P.O. Box 911399, Amman 11191, Jordan;
Ali Abdullah Alhay, a/k/a Ali Alhay, a/k/a Ali Abdullah Ahmed Alhay, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq and Anak Street, Qatif, Saudi Arabia 61177;
Bahar Safwa General Trading, P.O. Box 113212, Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates and P.O. Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates;
Sky Blue Bird Group, a/k/a Sky Blue Bird Aviation, a/k/a Sky Blue Bird Ltd., a/k/a Sky Blue Bird FZC, P.O. Box 16111, Ras Al Khaimah Trade Zone, United Arab Emirates;
Issam Shammout, a/k/a Muhammad Isam Muhammad, Anwar Nur Shammout, a/k/a Issam Anwar, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria, and Al Kolaa, Beirut, Lebanon 151515, and 17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom, and Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No. 14/A Silivri, Istanbul, Turkey

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order issued in this matter on November 17, 2021. I find that

renewal of this order, as modified, is necessary in the public interest to prevent an imminent violation of the Regulations.[1]

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed an order denying Mahan Airways' export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations, and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

This temporary denial order (''TDO'') was renewed in accordance with Section 766.24(d) of the Regulations.[2] Subsequent renewals also have issued pursuant to Section 766.24(d), including most recently on November 17, 2021.[3] Some of the renewal orders and the modification orders that have issued between renewals have added certain parties as respondents or as related persons, or effected the removal of certain parties.[4]

The September 11, 2009 renewal order continued the denial order as to Mahan Airways, but not as to the Balli Group Respondents or Blue Airways of Armenia.[5] As part of the February 25, 2011 renewal order, Pejman Mahmood Kosarayanifard (a/k/a Kosarian Fard), Mahmoud Amini, and Gatewick LLC (a/k/a Gatewick Freight and Cargo Services, a/k/a Gatewick Aviation Services) were added as related persons to prevent evasion of the TDO.[6] A modification order issued on July 1, 2011, adding Zarand Aviation as a respondent in order to prevent an imminent violation.[7]

As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added as related persons. Mahan Air General Trading LLC, Equipco (UK) Ltd., and Skyco (UK) Ltd. were added as related persons by a modification order issued on April 9, 2012. Mehdi Bahrami was added as a related person as part of the February 4, 2013 renewal order.

On May 21, 2015, a modification order issued adding Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. As detailed in that order and discussed further *infra,* these respondents were added to the TDO based upon evidence that they were acting together to, *inter alia,* obtain aircraft subject to the Regulations for export or reexport to Mahan in violation of the Regulations and the TDO.

Sky Blue Bird Group and its chief executive officer, Issam Shammout, were added as related persons as part of the July 13, 2015 renewal order.[8] On November 16, 2017, a modification order issued to remove Ali Eslamian, Equipco (UK) Ltd., and Skyco (UK) Ltd. as related persons following a request by OEE for their removal.[9]

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[1] The Regulations, currently codified at 15 CFR parts 730–774 (2021), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015)) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders.

[2] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order. Renewal requests may include discussion of any additional or changed circumstances, and may seek appropriate modifications to the order, including the addition of parties as respondents or related persons, or the removal of parties previously added as respondents or related persons. BIS is not required to seek renewal as to all parties, and a removal of a party can be effected if, without more, BIS does not seek renewal as to that party. Any party included or added to a temporary denial order as a respondent may oppose a renewal request as set forth in Section 766.24(d). Parties included or added as related persons can at any time appeal their inclusion as a related person, but cannot challenge the underlying temporary denial order, either as initially issued or subsequently renewed, and cannot oppose a renewal request. *See also* note 4, *infra.*

[3] The November 17, 2021 renewal order was effective upon issuance and published in the **Federal Register** on November 22, 2021 (86 FR 66,277). Prior renewal orders issued on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 25, 2011, August 24, 2011, February 15, 2012, August 9, 2012, February 4, 2013, July 31, 2013, January 24, 2014, July 22, 2014, January 16, 2015, July 13, 2015, January 7, 2016, July 7, 2016, December 30, 2016, June 27, 2017, December 20, 2017, June 14, 2018, December 11, 2018, June 5, 2019, May 29, 2020, November 24, 2020, May 21, 2021, and November 17, 2021, respectively. The August 24, 2011 renewal followed the issuance of a modification order that issued on July 1, 2011, to add Zarand Aviation as a respondent. The July 13, 2015 renewal followed a modification order that issued May 21, 2015, and added Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. Each of the renewal orders and each of the modification orders referenced in this footnote or elsewhere in this order has been published in the **Federal Register**.

[4] Pursuant to Sections 766.23 and 766.24(c) of the Regulations, any person, firm, corporation, or business organization related to a denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may be added as a ''related person'' to a temporary denial order to prevent evasion of the order.

[5] Balli Group PLC and Balli Aviation settled proposed BIS administrative charges as part of a settlement agreement that was approved by a settlement order issued on February 5, 2010. The sanctions imposed pursuant to that settlement and order included, *inter alia,* a $15 million civil penalty and a requirement to conduct five external audits and submit related audit reports. The Balli Group Respondents also settled related charges with the Department of Justice and the Treasury Department's Office of Foreign Assets Control.

[6] *See* note 4, *supra,* concerning the addition of related persons to a temporary denial order. Kosarian Fard and Mahmoud Amini remain parties to the TDO. On August 13, 2014, BIS and Gatewick resolved administrative charges against Gatewick, including a charge for acting contrary to the terms of a BIS denial order (15 CFR 764.2(k)). In addition to the payment of a civil penalty, the settlement includes a seven-year denial order. The first two years of the denial period were active, with the remaining five years suspended conditioned upon Gatewick's full and timely payment of the civil penalty and its compliance with the Regulations during the seven-year denial order period. This denial order, in effect, superseded the TDO as to Gatewick, which was not included as part of the January 16, 2015 renewal order. The Gatewick LLC Final Order was published in the **Federal Register** on August 20, 2014. *See* 79 FR 49,283 (Aug. 20, 2014).

[7] Zarand Aviation's export privileges remained denied until July 22, 2014, when it was not included as part of the renewal order issued on that date.

[8] The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') designated Sky Blue Bird and Issam Shammout as Specially Designated Global Terrorists (''SDGTs'') on May 21, 2015, pursuant to Executive Order 13224, for ''providing support to Iran's Mahan Air.'' *See* 80 FR 30,762 (May 29, 2015).

[9] The November 16, 2017 modification was published in the **Federal Register** on December 4, 2017. *See* 82 FR 57,203 (Dec. 4, 2017). On September 28, 2017, BIS and Ali Eslamian resolved an administrative charge for acting contrary to the terms of the denial order (15 CFR 764.2(k)) that was based upon Eslamian's violation of the TDO after his addition to the TDO on August 24, 2011. Equipco (UK) Ltd. and Skyco (UK) Ltd., two companies owned and operated by Eslamian, also were parties to the settlement agreement and were added to the settlement order as related persons. In

The December 11, 2018 renewal order continued the denial of the export privileges of Mahan Airways, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Al Naser Airlines, Ali Abdullah Alhay, Bahar Safwa General Trading, Sky Blue Bird Group, and Issam Shammout.

On April 25, 2022, BIS, through OEE, submitted a written request for renewal of the TDO that issued on November 17, 2021. The written request was made more than 20 days before the TDO's scheduled expiration. Notice of the renewal request was provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received. Furthermore, no appeal of the related person determinations made as part of the September 3, 2010, February 25, 2011, August 24, 2011, April 9, 2012, February 4, 2013, and July 13, 2015 renewal or modification orders has been made by Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, or Issam Shammout.[10]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue or renew an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Requests for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO, and the renewal and modification orders subsequently issued in this matter, including the May 21, 2015 modification order and the renewal order issued on May 21, 2021, and the evidence developed over the course of this investigation, which indicate a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 renewal order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[11] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 renewal orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (EP–MNA, EP–MNB, and EP–MNE, respectively), and continued to operate at least two of them in violation of the Regulations and the TDO,[12] while also committing an additional knowing and willful violation when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 renewal order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, *inter alia,* that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 renewal order discussed the fact that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the United Arab Emirates (''UAE''), in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it acted as Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Moreover, in a January 24, 2011 filing in the U.K. court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran ''in an airworthy condition'' and that, depending on the outcome of its U.K. court appeal, the aircraft ''could immediately go back into service . . . on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, ¶¶ 108, 110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations. Two of these three

addition to other sanctions, the settlement provides that Eslamian, Equipco, and Skyco shall be subject to a conditionally-suspended denial order for a period of four years from the date of the settlement order.

[10] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c). *See* also note 2, *supra.*

[11] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[12] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 renewal order.

747s subsequently were removed from Iran and are no longer in Mahan Airways' possession. The third of these 747s remained in Iran under Mahan's control. Pursuant to Executive Order 13224, this 747 was designated a Specially Designated Global Terrorist (''SDGT'') by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') on September 19, 2012.[13] Furthermore, as discussed in the February 4, 2013 Order, open source information indicated that this 747, painted in the livery and logo of Mahan Airways, had been flown between Iran and Syria, and was suspected of ferrying weapons and/or other equipment to the Syrian Government from Iran's Islamic Revolutionary Guard Corps.

In addition, as first detailed in the July 1, 2011 and August 24, 2011 orders, and discussed in subsequent renewal orders in this matter, Mahan Airways also continued to evade U.S. export control laws by operating two Airbus A310 aircraft, bearing Mahan Airways' livery and logo, on flights into and out of Iran.[14] At the time of the July 1, 2011 and August 24, 2011 orders, these Airbus A310s were registered in France, with tail numbers F–OJHH and F–OJHI, respectively.[15] The August 2012 renewal order also found that Mahan Airways had acquired another Airbus A310 aircraft subject to the Regulations, with MSN 499 and Iranian tail number EP–VIP, in violation of the Regulations.[16] On September 19, 2012, all three Airbus A310 aircraft (tail numbers F–OJHH, F–OJHI, and EP–VIP) were designated as SDGTs.[17]

The February 4, 2013 renewal order laid out further evidence of continued and additional efforts by Mahan Airways and other persons acting in concert with Mahan, including Kral Aviation and another Turkish company, to procure U.S.-origin engines—two GE CF6–50C2 engines, with MSNs 517621 and 517738, respectively—and other aircraft parts in violation of the TDO and the Regulations.[18] The February 4, 2013 order also added Mehdi Bahrami as a related person in accordance with Section 766.23 of the Regulations. Bahrami, a Mahan Vice-President and the head of Mahan's Istanbul Office, also was involved in Mahan's acquisition of the original three Boeing 747s (Aircraft 1–3) that resulted in the original TDO, and has had a business relationship with Mahan dating back to 1997.

The July 31, 2013 renewal order detailed additional evidence obtained by OEE showing efforts by Mahan Airways to obtain another GE CF6–50C2 aircraft engine (MSN 528350) from the United States via Turkey. Multiple Mahan employees, including Mehdi Bahrami, were involved in or aware of matters related to the engine's arrival in Turkey from the United States, plans to visually inspect the engine, and prepare it for shipment from Turkey.

Mahan Airways sought to obtain this U.S.-origin engine through Pioneer Logistics Havacilik Turizm Yonetim Danismanlik (''Pioneer Logistics''), an aircraft parts supplier located in Turkey, and its director/operator, Gulnihal Yegane, a Turkish national who previously had conducted Mahan related business with Mehdi Bahrami and Ali Eslamian. Moreover, as referenced in the July 31, 2013 renewal order, a sworn affidavit by Kosol Surinanda, also known as Kosol Surinandha, Managing Director of Mahan's General Sales Agent in Thailand, stated that the shares of Pioneer Logistics for which he was the listed owner were ''actually the property of and owned by Mahan.'' He further stated that he held ''legal title to the shares until otherwise required by Mahan'' but would ''exercise the rights granted to [him] exactly and only as instructed by Mahan and [his] vote and/or decisions [would] only and exclusively reflect the wills and demands of Mahan[.]'' [19]

The January 24, 2014 renewal order outlined OEE's continued investigation of Mahan Airways' activities and detailed an attempt by Mahan, which OEE thwarted, to obtain, via an Indonesian aircraft parts supplier, two U.S.-origin Honeywell ALF–502R–5 aircraft engines (MSNs LF5660 and LF5325), items subject to the Regulations, from a U.S. company located in Texas. An invoice of the Indonesian aircraft parts supplier dated March 27, 2013, listed Mahan Airways as the purchaser of the engines and included a Mahan ship-to address. OEE also obtained a Mahan air waybill dated March 12, 2013, listing numerous U.S.-origin aircraft parts subject to the Regulations—including, among other items, a vertical navigation gyroscope, a transmitter, and a power control unit—being transported by Mahan from Turkey to Iran in violation of the TDO.

The July 22, 2014 renewal order discussed open source evidence from the March-June 2014 time period regarding two BAE regional jets, items subject to the Regulations, that were painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MOI and EP–MOK, respectively.[20] In addition, aviation industry resources indicated that these aircraft were obtained by Mahan Airways in late November 2013 and June 2014, from Ukrainian Mediterranean Airline, a Ukrainian airline that was added to BIS's Entity List (Supplement No. 4 to Part 744 of the Regulations) on August 15, 2011, for acting contrary to the national security and foreign policy interests of the

[13] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.*

[14] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the Regulations and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the Regulations. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[15] OEE subsequently presented evidence that after the August 24, 2011 renewal, Mahan Airways worked along with Kerman Aviation and others to de-register the two Airbus A310 aircraft in France and to register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI). It was determined subsequent to the February 15, 2012 renewal order that the registration switch for these A310s was cancelled and that Mahan Airways then continued to fly the aircraft under the original French tail numbers (F–OJHH and F–OJHI, respectively). Both aircraft apparently remain in Mahan Airways' possession.

[16] *See* note 14, *supra.*

[17] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.* Mahan Airways was previously designated by OFAC as a SDGT on October 18, 2011. 77 FR 64,427 (October 18, 2011).

[18] Kral Aviation was referenced in the February 4, 2013 renewal order as ''Turkish Company No. 1.'' Kral Aviation purchased a GE CF6–50C2 aircraft engine (MSN 517621) from the United States in July 2012, on behalf of Mahan Airways. OEE was able to prevent this engine from reaching Mahan by issuing a redelivery order to the freight forwarder in accordance with Section 758.8 of the Regulations. OEE also issued Kral Aviation a redelivery order for the second CF6–50C2 engine (MSN 517738) on July 30, 2012. The owner of the second engine subsequently cancelled the item's sale to Kral Aviation. In September 2012, OEE was alerted by a U.S. exporter that another Turkish company (''Turkish Company No. 2'') was attempting to purchase aircraft spare parts intended for re-export by Turkish Company No. 2 to Mahan Airways. *See* February 4, 2013 renewal order.

On December 31, 2013, Kral Aviation was added to BIS's Entity List, Supplement No. 4 to Part 744 of the Regulations. *See* 78 FR 75,458 (Dec. 12, 2013). Companies and individuals are added to the Entity List for engaging in activities contrary to the national security or foreign policy interests of the United States. *See* 15 CFR 744.11.

[19] Pioneer Logistics, Gulnihal Yegane, and Kosol Surinanda also were added to the Entity List on December 12, 2013. *See* 78 FR 75,458 (Dec. 12, 2013).

[20] The BAE regional jets are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. These aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

United States.[21] Open source information indicated that at least EP–MOI remained active in Mahan's fleet, and that the aircraft was being operated on multiple flights in July 2014.

The January 16, 2015 renewal order detailed evidence of additional attempts by Mahan Airways to acquire items subject the Regulations in further violation of the TDO. Specifically, in March 2014, OEE became aware of an inertial reference unit bearing serial number 1231 (''the IRU'') that had been sent to the United States for repair. The IRU is a U.S.-origin item, subject to the Regulations, classified under ECCN 7A103, and controlled for missile technology reasons. Upon closer inspection, it was determined that IRU came from or had been installed on an Airbus A340 aircraft bearing MSN 056. Further investigation revealed that as of approximately February 2014, this aircraft was registered under Iranian tail number EP–MMB and had been painted in the livery and logo of Mahan Airways.

The January 16, 2015 renewal order also described related efforts by the Departments of Justice and Treasury to further thwart Mahan's illicit procurement efforts. Specifically, on August 14, 2014, the United States Attorney's Office for the District of Maryland filed a civil forfeiture complaint for the IRU pursuant to 22 U.S.C. 401(b) that resulted in the court issuing an Order of Forfeiture on December 2, 2014. EP–MMB remains listed as active in Mahan Airways' fleet and has been used on flights into and out of Iran as recently as December 19, 2017.

Additionally, on August 29, 2014, OFAC blocked the property and interests in property of Asian Aviation Logistics of Thailand, a Mahan Airways affiliate or front company, pursuant to Executive Order 13224. In doing so, OFAC described Mahan Airways' use of Asian Aviation Logistics to evade sanctions by making payments on behalf of Mahan for the purchase of engines and other equipment.[22]

The May 21, 2015 modification order detailed the acquisition of two aircraft, specifically an Airbus A340 bearing MSN 164 and an Airbus A321 bearing MSN 550, that were purchased by Al Naser Airlines in late 2014/early 2015 and were under the possession, control, and/or ownership of Mahan Airways.[23] The sales agreements for these two aircraft were signed by Ali Abdullah Alhay for Al Naser Airlines.[24] Payment information reveals that multiple electronic funds transfers (''EFT'') were made by Ali Abdullah Alhay and Bahar Safwa General Trading in order to acquire MSNs 164 and 550.

The May 21, 2015 modification order also laid out evidence showing the respondents' attempts to obtain other controlled aircraft, including aircraft physically located in the United States in similarly-patterned transactions during the same recent time period. Transactional documents involving two Airbus A320s bearing MSNs 82 and 99, respectively, again showed Ali Abdullah Alhay signing sales agreements for Al Naser Airlines.[25] A review of the payment information for these aircraft similarly revealed EFTs from Ali Abdullah Alhay and Bahar Safwa General Trading that follow the pattern described for MSNs 164 and 550, *supra.* MSNs 82 and 99 were detained by OEE Special Agents prior to their planned export from the United States.

The July 13, 2015 renewal order outlined evidence showing that Al Naser Airlines' attempts to acquire aircraft on behalf of Mahan Airways extended beyond MSNs 164 and 550 to include a total of nine aircraft.[26] Four of the aircraft, all of which are subject to the Regulations and were obtained by Mahan from Al Naser Airlines, had been issued the following Iranian tail numbers: EP–MMD (MSN 164), EP–MMG (MSN 383), EP–MMH (MSN 391) and EP–MMR (MSN 416), respectively.[27] Publicly available flight tracking information provided evidence that at the time of the July 13, 2015 renewal, both EP–MMH and EP–MMR were being actively flown on routes into and out of Iran in violation of the Regulations.[28]

The January 7, 2016 renewal order discussed evidence that Mahan Airways had begun actively flying EP–MMD on international routes into and out of Iran. Additionally, the January 7, 2016 order described publicly available aviation database and flight tracking information indicating that Mahan Airways continued efforts to acquire Iranian tail numbers and press into active service under Mahan's livery and logo at least two more of the Airbus A340 aircraft it had obtained from or through Al Naser Airlines: EP–MME (MSN 371) and EP–MMF (MSN 376), respectively.

[21] *See* 76 FR 50,407 (Aug. 15, 2011). The July 22, 2014 renewal order also referenced two Airbus A320 aircraft painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MMK and EP–MML, respectively. OEE's investigation also showed that Mahan obtained these aircraft in November 2013, from Khors Air Company, another Ukrainian airline that, like Ukrainian Mediterranean Airlines, was added to BIS's Entity List on August 15, 2011. Open source evidence indicates the two Airbus A320 aircraft may have been transferred by Mahan Airways to another Iranian airline in October 2014, and issued Iranian tail numbers EP–APE and EP–APF, respectively.

[22] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140829.aspx. See* 79 FR 55,073 (Sep. 15, 2014). OFAC also blocked the property and property interests of Pioneer Logistics of Turkey on August 29, 2014. *Id.* Mahan Airways' use of Pioneer Logistics in an effort to evade the TDO and the Regulations was discussed in a prior renewal order, as summarized, *supra,* at 14. BIS added both Asian Aviation Logistics and Pioneer Logistics to the Entity List on December 12, 2013. *See* 78 FR 75,458 (Dec. 12, 2013).

[23] Both of these aircraft are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. Both aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[24] The evidence obtained by OEE showed Ali Abdullah Alhay as a 25% owner of Al Naser Airlines.

[25] Both aircraft were physically located in the United States and therefore are subject to the Regulations pursuant to Section 734.3(a)(1). Moreover, these Airbus A320s are powered by U.S.-origin engines that are subject to the Regulations and classified under Export Control Classification Number ECCN 9A991.d. The Airbus A320s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[26] This evidence included a press release dated May 9, 2015, that appeared on Mahan Airways' website and stated that Mahan ''added 9 modern aircraft to its air fleet [,]'' and that the newly acquired aircraft included eight Airbus A340s and one Airbus A321. *See http://www.mahan.aero/en/mahan-air/press-room/44.* The press release was subsequently removed from Mahan Airways' website. Publicly available aviation databases similarly showed that Mahan had obtained nine additional aircraft from Al Naser Airlines in May 2015, including MSNs 164 and 550. As also discussed in the July 13, 2015 renewal order, Sky Blue Bird Group, via Issam Shammout, was actively involved in Al Naser Airlines' acquisition of MSNs 164 and 550, and the attempted acquisition of MSNs 82 and 99 (which were detained by OEE).

[27] The Airbus A340s are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[28] There is some publicly available information indicating that the aircraft Mahan Airways is flying under Iranian tail number EP–MMR is now MSN 615, rather than MSN 416. Both aircraft are Airbus A340 aircraft that Mahan acquired from Al Naser Airlines in violation of the Regulations. Moreover, both aircraft were designated as SDGTs by OFAC on May 21, 2015, pursuant to Executive Order 13224. *See* 80 FR 30,762 (May 29, 2015).

The July 7, 2016 renewal order described Mahan Airways' acquisition of a BAE Avro RJ–85 aircraft (MSN 2392) in violation of the Regulations and its subsequent registration under Iranian tail number EP–MOR.[29] This information was corroborated by publicly available information on the website of Iran's civil aviation authority. The July 7, 2016 order also outlined Mahan's continued operation of EP–MMF in violation of the Regulations on routes from Tehran, Iran to Beijing, China and Shanghai, China, respectively.

The December 30, 2016 renewal order outlined Mahan's continued operation of multiple Airbus aircraft, including EP–MMD (MSN 164), EP–MMF (MSN 376), and EP–MMH (MSN 391), which were acquired from or through Al Naser Airlines, as previously detailed in pertinent part in the July 13, 2015 and January 7, 2016 renewal orders. Publicly available flight tracking information showed that the aircraft were operated on flights into and out of Iran, including from/to Beijing, China, Kuala Lumpur, Malaysia, and Istanbul, Turkey.[30]

The June 27, 2017 renewal order included similar evidence regarding Mahan Airways' operation of multiple Airbus aircraft subject to the Regulations, including, but not limited to, aircraft procured from or through Al Naser Airlines, on flights into and out of Iran, including from/to Moscow, Russia, Shanghai, China and Kabul, Afghanistan. The June 27, 2017 order also detailed evidence concerning a suspected planned or attempted diversion to Mahan of an Airbus A340 subject to the Regulations that had first been mentioned in OEE's December 13, 2016 renewal request.

The December 20, 2017 renewal order presented evidence that a Mahan employee attempted to initiate negotiations with a U.S. company for the purchase of an aircraft subject to the Regulations and classified under ECCN 9A610. Moreover, the order highlighted Al Naser Airlines' acquisition, via lease, of at least possession and/or control of a Boeing 737 (MSN 25361), bearing tail number YR–SEB, and an Airbus A320 (MSN 357), bearing tail number YR–SEA, from a Romanian company in violation of the TDO and the Regulations.[31] Open source information indicates that after the December 20, 2017 renewal order publicly exposed Al Naser's acquisition of these two aircraft (MSNs 25361 and 357), the leases were subsequently cancelled and the aircraft returned to their owner.

The December 20, 2017 renewal order also included evidence indicating that Mahan Airways was continuing to operate a number of aircraft subject to the Regulations, including aircraft originally procured from or through Al Naser Airlines, on flights into and out of Iran, including from/to Lahore, Pakistan, Shanghai, China, Ankara, Turkey, Kabul, Afghanistan, and Baghdad, Iraq.

The June 14, 2018 renewal order outlined evidence that Mahan began actively operating EP–MMT, an Airbus A340 aircraft (MSN 292) acquired in 2017 and previously registered in Kazakhstan under tail number UP–A4003, on international flights into and out of Iran.[32] It also discussed evidence that Mahan continued to operate a number of aircraft subject to the Regulations, including, but not limited to, EP–MME, EP–MMF, and EP–MMH, on international flights into and out of Iran, including from/to Beijing, China.

The June 14, 2018 renewal order also noted OFAC's May 24, 2018 designation of Otik Aviation, a/k/a Otik Havacilik Sanayi Ve Ticaret Limited Sirketi, of Turkey, as an SDGT pursuant to Executive Order 13224, for providing material support to Mahan, as well as OFAC's designation as SDGTs of an additional twelve aircraft in which Mahan has an interest.[33] The June 14, 2018 order also cited the April 2018 arrest and arraignment of a U.S. citizen on a three-count criminal information filed in the United States District Court for the District of New Jersey involving the unlicensed exports of U.S.-origin aircraft parts valued at over $2 million to Iran, including to Mahan Airways.

The December 11, 2018 renewal order detailed publicly available information showing that Mahan Airways had continued operating a number of aircraft subject to the EAR, including, but not limited to, EP–MMB, EP–MME, EP–MMF, and EP–MMQ, on international flights into and out of Iran from/to Istanbul, Turkey, Guangzhou, China, Bangkok, Thailand, and Dubai, UAE.[34] It also discussed that OEE's continued investigation of Mahan Airways and its affiliates and agents had resulted in an October 2018 guilty plea by Arzu Sagsoz, a Turkish national, in the U.S. District Court for the District of Columbia, stemming from her involvement in a conspiracy to export a U.S.-origin aircraft engine, valued at approximately $810,000, to Mahan.

The December 11, 2018 order also noted OFAC's September 14, 2018 designation of Mahan-related entities as SDGTs pursuant to Executive Order 13224, namely, My Aviation Company Limited, of Thailand, and Mahan Travel and Tourism SDN BHD, a/k/a Mahan Travel a/k/a Mihan Travel & Tourism SDN BHD, of Malaysia.[35] As general sales agents for Mahan Airways, these

[29] The BAE Avro RJ–85 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The BAE Avro RJ–85 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the EAR regardless of its location. The aircraft is classified under ECCN 9A991.b, and its export or re-export to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[30] Specifically, on December 22, 2016, EP–MMD (MSN 164) flew from Dubai, UAE to Tehran, Iran. Between December 20 and December 22, 2016, EP–MMF (MSN 376) flew on routes from Tehran, Iran to Beijing, China and Istanbul, Turkey, respectively. Between December 26 and December 28, 2016, EP–MMH (MSN 391) flew on routes from Tehran, Iran to Kuala Lumpur, Malaysia.

[31] The Airbus A320 is powered with U.S.-origin engines, which are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The engines are valued at more than 10 percent of the total value of the aircraft, which consequently is subject to the EAR. The aircraft is classified under ECCN 9A991.b, and its export or reexport to Iran would require U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations.

[32] The Airbus A340 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the Regulations regardless of its location. The aircraft is classified under ECCN 9A991.b. The export or re-export of this aircraft to Iran requires U.S. Government authorization pursuant to Sections 742.8 and 746.7 of the Regulations. On June 4, 2018, EP–MMT (MSN 292) flew from Bangkok, Thailand to Tehran, Iran.

[33] *See* 83 FR 27,828 (June 14, 2018). OFAC's related press release stated in part that ''[o]ver the last several years, Otik Aviation has procured and delivered millions of dollars in aviation-related spare and replacement parts for Mahan Air, some of which are procured from the United States and the European Union. As recently as 2017, Otik Aviation continued to provide Mahan Air with replacement parts worth well over $100,000 per shipment, such as aircraft brakes.'' The twelve additional Mahan-related aircraft that were designated are: EP–MMA (MSN 20), EP–MMB (MSN 56), EP–MMC (MSN 282), EP–MMJ (MSN 526), EP–MMV (MSN 2079), EP–MNF (MSN 547), EP–MOD (MSN 3162), EP–MOM (MSN 3165), EP–MOP (MSN 2257), EP–MOQ (MSN 2261), EP–MOR (MSN 2392), and EP–MOS (MSN 2347). *See https://home.treasury.gov/news/press-releases/sm0395. See also https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180524.aspx.*

[34] Flight tracking information showed that on December 10, 2018, EP–MMB (MSN 56) flew from Istanbul, Turkey to Tehran, Iran, and EP–MME (MSN 371) flew from Guangzhou, China to Tehran, Iran. Additionally, on December 6, 2018, EP–MMF (MSN 376) flew from Bangkok, Thailand to Tehran, Iran, and on December 9, 2018, EP–MMQ (MSN 449) flew on routes between Dubai, United Arab Emirates and Tehran, Iran.

[35] *See* 83 FR 34,301 (July 19, 2018) (designation of Mahan Travel and Tourism SDN BHD on July 9, 2018), and 83 FR 53,359 (Oct. 22, 2018) (designation of My Aviation Company Limited and updating of entry for Mahan Travel and Tourism SDN BHD on September 14, 2018).

companies sold cargo space aboard Mahan Airways' flights, including on flights to Iran, and provided other services to or for the benefit of Mahan Airways and its operations.[36]

The June 5, 2019 renewal order highlighted Mahan's continued violation of the TDO and the Regulations. An end-use check conducted by BIS in Malaysia in March 2019 uncovered evidence that, on approximately ten occasions, Mahan had caused, aided and/or abetted the unlicensed export of U.S.-origin items subject to the Regulations from the United States to Iran via Malaysia. The items included helicopter shafts, transmitters, and other aircraft parts, some of which are listed on the Commerce Control List and controlled on anti-terrorism grounds. The June 5, 2019 order also detailed publicly available flight tracking information showing that Mahan continued to unlawfully operate a number of aircraft subject to the EAR on flights into and out of Iran, including on routes to and from Damascus, Syria.[37]

The June 5, 2019 order also described actions taken by both BIS and OFAC to thwart efforts by entities connected to or acting on behalf of Mahan Airways to violate U.S. export controls and sanctions related to Iran. On May 14, 2019, BIS added Manohar Nair, Basha Asmath Shaikh, and two co-located companies that they operate, Emirates Hermes General Trading and Presto Freight International, LLC, to the Entity List pursuant to Section 744.11 of the Regulations, including for engaging in activities to procure U.S.-origin items on Mahan's behalf.[38] On January 24, 2019, OFAC designated as SDGTs Flight Travel LLC, which is Mahan's general service agent in Yerevan, Armenia, and Qeshm Fars Air, an Iranian airline which operates two U.S.-origin Boeing 747s [39] and is owned or controlled by Mahan, and also linked to the Islamic Revolutionary Guard Corps-Qods Force (IRGC–QF).[40]

The December 2, 2019 renewal order noted that OEE's on-going investigation revealed that U.S.-origin passenger flight and database management software subject to the Regulations was provided to a company in Turkey and subsequently used to facilitate and service Mahan's operations into and out of Turkey in further violation of the Regulations.

Additionally, open source information, including flight tracking data and news articles published in October 2019, showed that Mahan Airways was now operating a U.S.-origin Boeing 747 on routes between Iranian airports in Tehran, Kish Island, and Mashhad. This aircraft, bearing Iranian tail number EP–MNB, appears to be one of the three aircraft that Mahan illegally acquired via Blue Airways of Armenia and U.K.-based Balli Group that resulted in the issuance of the original TDO.[41] *See supra* at 10–12.

Evidence was also described in the December 2, 2019 renewal order showing that on or about November 11, 2019, Mahan caused, aided and/or abetted the unlicensed export of a U.S.-origin atomic absorption spectrometer, an item subject to the Regulations, from the United States to Iran via the UAE. Finally, publicly available flight tracking information showed that Mahan continued to unlawfully operate a number of aircraft subject to the EAR on flights into and out of Iran, including on routes to and from Guangzhou, China, Istanbul, Turkey, and Kuala Lumpur, Malaysia.[42]

The May 29, 2020 renewal order cited Mahan's operation of EP–MMD, EP–MMF, and EP–MMI, aircraft originally acquired from Al Naser Airlines, on international flights into and out of Iran from/to Bangkok, Thailand, Dubai, UAE, and Shanghai, China in violation of the TDO and EAR.[43] The May 29, 2020 renewal order also detailed the indictment of Ali Abdullah Alhay and Issam Shammout, parties added to the TDO in May and July 2015, respectively, in the United States District Court for the District of Columbia. Alhay and Shammout were charged with, among other violations, conspiring to export aircraft and parts to Mahan in violation of export control laws and the embargo on Iran beginning around August 2012 through May 2015.

In addition to detailing the operation of multiple aircraft in violation of the Regulations,[44] the November 24, 2020 renewal order discussed a related TDO issued on August 19, 2020, denying for 180 days the export privileges of Indonesia-based PT MS Aero Support (''PTMS Aero''), PT Antasena Kreasi (''PTAK''), PT Kandiyasa Energi Utama (''PTKEU''), Sunarko Kuntjoro, Triadi Senna Kuntjoro, and Satrio Wiharjo Sasmito based on their involvement in the unlicensed export of aircraft parts to Mahan Airways—often in coordination with Mustafa Ovieci, a Mahan executive.[45] These parties also facilitated the shipment of damaged Mahan parts to the United States for repair and subsequent export back to Iran in further violation of U.S. laws. In both instances, the fact that the items were destined to Iran/Mahan was concealed from U.S. companies, shippers, and freight forwarders.[46]

The November 24, 2020 renewal order also includes actions taken by other U.S. government agencies such as OFAC's August 19, 2020 designation of UAE-based Parthia Cargo, its CEO Amin Mahdavi, and Delta Parts Supply FZC as SDGTs pursuant to Executive Order 13224 for providing ''key parts and logistics services for Mahan Air. . . .''

[36] OFAC's press release concerning its designation of My Aviation Company Limited on September 14, 2018, states in part that ''[t]his Thailand-based company has disregarded numerous U.S. warnings, issued publicly and delivered bilaterally to the Thai government, to sever ties with Mahan Air.'' My Aviation provides cargo services to Mahan Airways, including freight booking, and works with local freight forwarding entities to ship cargo on regularly-scheduled Mahan Airways' flights to Tehran, Iran. My Aviation has also provided Mahan Airways with passenger booking services. *See https://home.treasury.gov/news/press-releases/sm484.*

[37] Specifically, on May 26, 2019, EP–MMJ (MSN 526) flew from Damascus, Syria to Tehran, Iran. In addition, on May 24, 2019, EP–MNF (MSN 547) flew on routes between Moscow, Russia and Tehran, and on May 23, 2019, EP–MMF (MSN 376) flew from Dubai, UAE to Tehran.

[38] *See* 84 FR 21,233 (May 14, 2019).

[39] These 747s are registered in Iran with tail numbers EP–FAA and EP–FAB, respectively.

[40] OFAC's press release concerning these designations states that Qeshm Fars Air was being designated for ''being owned or controlled by Mahan Air, as well as for assisting in, sponsoring, or providing financial, material or technological support for, or financial or other services to or in support of, the IRGC–QF,'' and that Flight Travel LLC was being designated for ''acting for or on behalf of Mahan Air.'' It further states, *inter alia,* that ''Mahan Air employees fill Qeshm Fars Air management positions, and Mahan Air provides technical and operational support for Qeshm Fars Air, facilitating the airline's illicit operations.'' *See https://home.treasury.gov/news/press-releases/sm590. See also https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190124.aspx.*

[41] The same open sources indicated this aircraft continued to operate on flights within Iran to include a May 11, 2020 flight from Tehran, Iran to Kerman, Iran.

[42] Publicly available flight tracking information shows that on November 23, 2019, EP–MME (MSN 371) flew from Guangzhou, China to Tehran, Iran, and on November 21, 2019, EP–MMF (MSN 376) flew on routes between Istanbul, Turkey and Tehran, Iran. Additionally, on November 20, 2019, EP–MMQ (MSN 449) flew from Kuala Lumpur, Malaysia, to Tehran, Iran.

[43] Publicly available flight tracking information shows that on May 8, 2020, EP–MMD (MSN 164) flew on routes between Bangkok, Thailand and Tehran, Iran, and on May 10, 2020, EP–MMF (MSN 376) flew on routes between Dubai, UAE and Tehran. In addition, on May 9, 2020, EP–MMI (MSN 416) flew on routes between Shanghai, China and Tehran.

[44] Publicly available flight tracking information shows that on November 13, 2020, EP–MMQ (MSN 449) flew on routes between Istanbul, Turkey and Tehran, Iran, and on November 15, 2020, EP–MMI (MSN 416) flew on routes between Shenzhen, China and Tehran.

[45] *See* 85 FR 52,321 (Aug. 25, 2020).

[46] PTMS Aero, PTAK, PTKEU, and Sunarko Kuntjoro were each indicted in December 2019 on multiple counts related to this conspiracy in the United States District Court for the District of Columbia.

The OFAC press release further states, in part, that Mahdavi ''has directly coordinated the shipment of parts on behalf of Mahan Air.'' [47] In addition, Mahdavi and Parthia Cargo were indicted in the United States District Court for the District of Columbia for violating sanctions on Iran.[48]

Moreover, in October 2020, the U.S. District Court for the District of New Jersey sentenced Joyce Eliasbachus to 18 months of confinement based on her role in a conspiracy to export $2 million dollars' worth of aircraft parts from the United States to Iran, including to Mahan Airways.[49]

The May 21, 2021 renewal order outlined Mahan's continued operation of a number of aircraft subject to the EAR, including, but not limited to, EP–MMH, EP–MMI, and EP–MMQ, on international flights into and out of Iran from/to Shanghai, China, and Dubai, United Arab Emirates, and Guangzhou, China, respectively.[50]

Open source news reporting also indicated that after five years of maintenance, Mahan Air is now operating EP–MNE, a Boeing 747 on domestic flights within Iran.[51] In addition to this aircraft being one of the original three Boeing aircraft Mahan obtained in violation of the Regulations, any service or maintenance involving parts subject to the EAR would further violate the TDO.

The November 17, 2021 order details Mahan's continued operation of a number of aircraft subject to the EAR, including, but not limited to EP–MME, EP–MMJ, EP–MMQ, on flights into and out of Iran from/to Istanbul, Turkey, and Dubai, United Arab Emirates, and Shenzhen, China, respectively.[52] Additionally, publicly available industry sources showed that EP–MMG (MSN 383), an aircraft that Mahan acquired from Al Naser Air in violation of both the TDO and Regulations, was in a maintenance, repair, overhaul (''MRO'') status at Iran's Imam Khomeini International Airport in Tehran, Iran.

Mahan continues to operate in violation of the TDO and/or Regulations a number of aircraft subject to the EAR, including, but not limited to EP–MME, EP–MNO, and EP–MMB on flights into and out of Iran from/to Moscow, Russia, Damascus, Syria, and Guangzhou, China, respectively.[53] Open source press reports also indicates that as of April 2022, Mahan Air increased its service into Moscow, Russia by adding two weekly flights to Moscow's Sheremetyevo Airport (SVO) to its current service into Moscow's Vnukovo Airport (VKO).[54]

In furtherance of the U.S. Government's coordinated efforts to thwart Mahan's malign activities, OFAC recently concluded an administrative enforcement case with an Australian freight forwarder resulting in a $6,131,855 civil penalty, which resolved, in part, allegations of receiving 327 payments from Mahan that were processed through U.S. financial institutions or foreign branches of U.S. financial institutions in apparent violation of OFAC sanctions.[55] Through these prior and on-going investigative efforts, OEE and its law enforcement partners are working to disrupt Mahan's illicit acquisition of aircraft and parts as well as its role in transporting or forwarding such items.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that the denied persons have acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should continue to avoid dealing with Mahan Airways and Al Naser Airlines and the other denied persons, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

III. Order

It is therefore ordered:

FIRST, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; MEHDI BAHRAMI, Mahan Airways-Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey; AL NASER AIRLINES A/K/A AL–NASER AIRLINES A/K/A AL NASER WINGS AIRLINE A/K/A ALNASER AIRLINES AND AIR FREIGHT LTD., Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Al Amirat Street, Section 309, St. 3/H.20, Al Mansour, Baghdad, Iraq, and P.O. Box 28360, Dubai, United Arab Emirates, and P.O. Box 911399, Amman 11191, Jordan; ALI ABDULLAH ALHAY A/K/A ALI ALHAY A/K/A ALI ABDULLAH AHMED ALHAY, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Anak Street, Qatif, Saudi Arabia 61177; BAHAR SAFWA GENERAL TRADING, P.O. Box 113212, Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates, and P.O. Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates; SKY BLUE BIRD GROUP A/K/A SKY BLUE BIRD AVIATION A/K/A SKY BLUE BIRD LTD A/K/A SKY BLUE BIRD FZC, P.O. Box 16111, Ras Al Khaimah Trade Zone, United Arab Emirates; and ISSAM SHAMMOUT A/K/A MUHAMMAD

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[47] *https://home.treasury.gov/news/press-releases/sm1098.*

[48] *https://www.justice.gov/opa/pr/iranian-national-and-uae-business-organization-charged-criminal-conspiracy-violate-iranian.*

[49] Eliasbachus' arrest and arraignment were detailed in the June 14, 2018 renewal order, as described *supra* at 21.

[50] Publicly available flight tracking information shows that on May 14, 2021, EP–MMH (MSN 391) flew on routes between Shanghai, China and Tehran, Iran, and on May 13, 2021, EP–MMI (MSN 416) flew on routes between Dubai, United Arab Emirates and Tehran. In addition, on May 20, 2021, EP–MMQ (MSN 346) flew on routes between Guangzhou, China and Tehran.

[51] *https://simpleflying.com/mahan-air-747-300-flies-again/.*

[52] Publicly available flight tracking information shows that on November 7, 2021, EP–MME (MSN 376) flew on routes between Istanbul, Turkey and Tehran, Iran, and on November 9, 2021, EP–MMJ (MSN 526) flew on routes between Dubai, United Arab Emirates and Tehran, Iran. In addition, on November 8, 2021, EP–MMQ (MSN 346) flew on routes between Shenzhen, China and Tehran, Iran.

[53] Publicly available flight tracking information shows that on May 2, 2022, EP–MME (MSN 376) flew on routes between Moscow, Russia and Tehran, Iran, and on May 5, 2022, EP–MNO (MSN 595) flew on routes between Damascus, Syria and Tehran, Iran. In addition, on May 6, 2022, EP–MMB (MSN 56) flew on routes between Guangzhou, China and Tehran, Iran.

[54] *https://centreforaviation.com/news/mahan-air-launches-moscow-sheremetyevo-service-1131185.*

[55] *https://home.treasury.gov/system/files/126/20220425_toll.pdf.*

ISAM MUHAMMAD ANWAR NUR SHAMMOUT A/K/A ISSAM ANWAR, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria, and Al Kolaa, Beirut, Lebanon 151515, and 17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom, and Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No.14/A Silivri, Istanbul, Turkey, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or engaging in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by ownership, control, position of responsibility, affiliation or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) of the EAR, Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, and/or Issam Shammout may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading and each related person, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: May 13, 2022.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–10674 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC037]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Enforcement Committee will hold a webconference.

DATES: The Enforcement Committee will begin on Thursday, June 2, 2022, From 1 p.m. to 3 p.m., Alaska Time.

ADDRESSES: The meeting will be by webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2939.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809.

Instructions for attending the meeting via webconference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Jon McCracken, Council staff; email: *jon.mccracken@noaa.gov.* For technical support, please contact our Council administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, June 2, 2022

The Enforcement Committee agenda will include: (a) Review the OLE Alaska Division 5-year priorities; (b) Observer Annual Report for 2021 (Enforcement Chapter); (c) the Trawl EM Analysis; and (d) other business. The agenda is subject to change, and the latest version will be posted at *https://*

meetings.npfmc.org/Meeting/Details/2939 prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2939.* For technical support, please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2939.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–10596 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC034]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Fishery Monitoring Advisory Committee (FMAC) will meet June 1, 2022.

DATES: The meeting will be held on Wednesday, June 1, 2022, from 8 a.m. to 4 p.m., Alaska Time.

ADDRESSES: The meeting will be a hybrid meeting. Attend in-person at the North Pacific Fisheries office, 1007 West Third Ave., Suite 400, Anchorage, AK 99501 or join online through the link at *https://meetings.npfmc.org/Meeting/Details/2936.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; telephone: (907) 271–2809; email: *sara.cleaver@noaa.gov.* For technical support, please contact Council administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, June 1, 2022

The May 2021 FMAC agenda will include: (a) Updates since the last FMAC meeting; (b) an abbreviated 2021 Observer Annual report; (c) discussion on Trawl EM Initial Review analysis, and (d) other business.

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2936* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2936.* If you are attending the meeting in-person, please note that all attendees will be required to wear a mask.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2936.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–10595 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB975]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Orsted Wind Power North America, LLC (Orsted), and its designees, Garden State Offshore Energy, LLC (Garden State) and Skipjack Offshore Energy, LLC (Skipjack), to incidentally harass marine mammals during marine site characterization surveys off the coast of Delaware and along potential export cable routes to landfall locations in Delaware and New Jersey.

DATES: This Authorization is effective from May 10, 2022 through May 9, 2023.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On October 1, 2021, NMFS received a request from Orsted on behalf of Garden State and Skipjack, both subsidiaries of Orsted, for an IHA to take marine mammals incidental to marine site characterization surveys off the coast of Delaware. Following NMFS' review of the draft application, a revised version was submitted on November 24, 2021. The application was deemed adequate and complete on February 11, 2022. Orsted's request is for take of a small number of 16 species of marine mammals, by Level B harassment only. Neither Orsted nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to Garden State (86 FR 33664; June 25, 2021) and Skipjack (86 FR 18943; April 12, 2021) for related work. Garden State's survey was effective until April 4, 2022 whereas work is still ongoing for Skipjack until their effectiveness end date of June 10, 2022. Orsted plans to survey the combined survey area of the aforementioned projects, including the same two Lease Areas currently being surveyed under those IHAs (see Figure 1).

Description of Activity

Overview

As part of their overall marine site characterization survey operations, Orsted plans to conduct high-resolution geophysical (HRG) and geotechnical surveys in Lease Areas OCS–A 0482 and 0519 (Lease Areas), and the associated export cable route (ECR) areas off the coast of Delaware (Figure 1).

The purpose of the marine site characterization surveys is to collect data concerning seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of offshore wind facility development. Surveys are also conducted to support engineering design and to map Unexploded Ordnance (UXO). Underwater sound resulting from the site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B harassment. Table 1 identifies representative survey equipment with the expected potential to result in take of marine mammals.

Dates and Duration

The site characterization surveys are anticipated to occur between May 10, 2022 and May 9, 2023. The exact dates have not yet been established. The activity is expected to include up to 350 survey days over the course of a single year (''survey day'' defined as a 24-hour (hr) activity period in which the assumed number of line kilometers (km) are surveyed). The number of anticipated survey days was calculated as the number of days needed to reach the overall level of effort required to meet survey objectives assuming any single vessel travels 4 knots (kn) (7.4 kilometers per hour (km/hr) and surveys cover, on average, 70 line km per 24-hr period. The applicant assumes the use of sparker systems, which produce the largest estimated harassment isopleths, on all survey days (see Table 1).

Specific Geographic Region

The activities will occur within the survey area which includes the Lease Areas and potential ECRs to landfall locations in Delaware, as shown in Figure 1. This survey area combines the survey areas associated with the previously issued Garden State (86 FR 33664; June 25, 2021) and Skipjack (86 FR 18943; April 12, 2021) IHAs. The combined Lease Areas (Garden State Lease Area OCS–A–0482 and Skipjack Lease Area OCS–A–0519) are comprised of approximately 568 square kilometers (km^2) within the WEA of BOEM's Mid-Atlantic planning area (see Figure 1). Water depths in the Lease Area range from approximately 15 to 40 meters (m).

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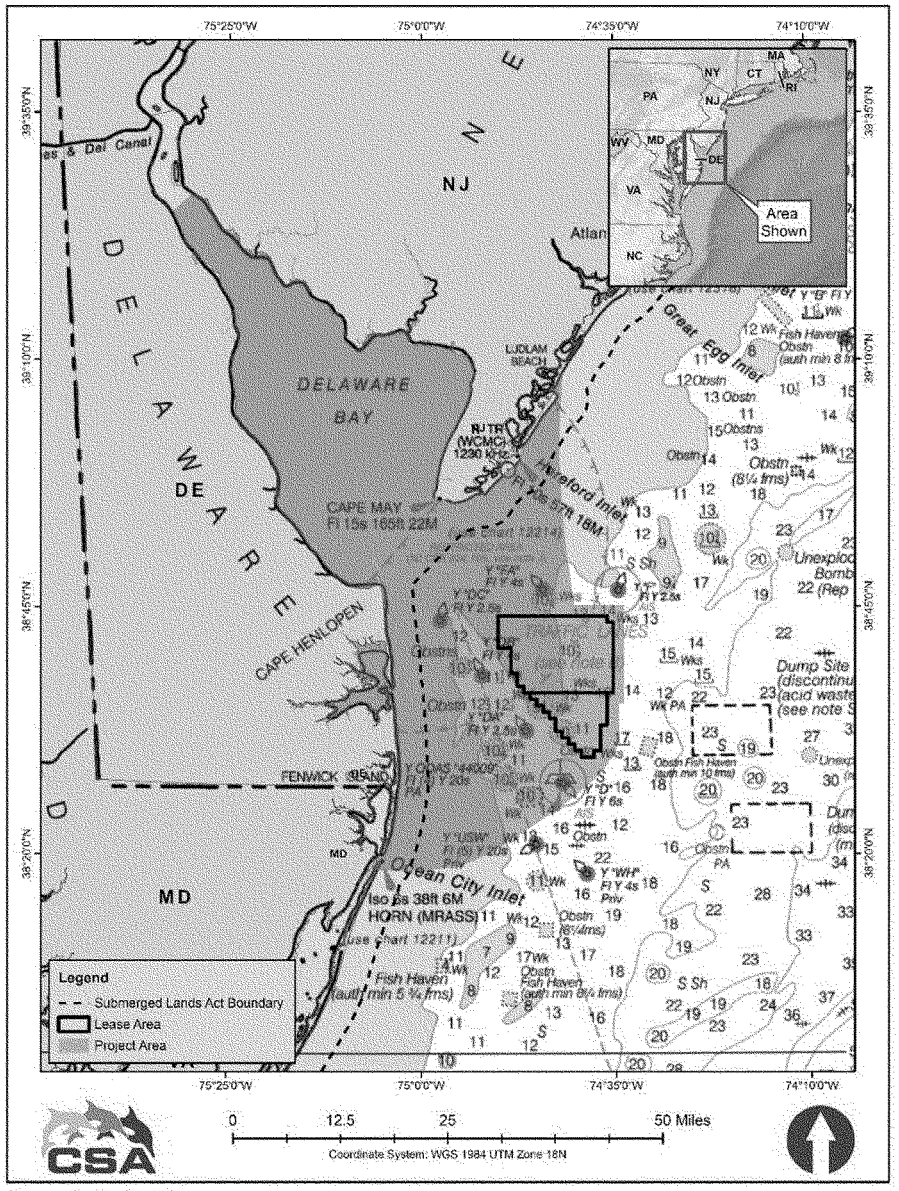

Figure 3. Project Area

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Author:

Figure 1. Survey area for the site characterization surveys which include the Lease Areas and the potential export cable route area.

Detailed Description of Specific Activity

Orsted plans to conduct HRG survey operations, including multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys will include the use of seafloor mapping equipment with operating frequencies above 180 kilohertz (kHz) (*e.g.,* side-scan sonar (SSS), multibeam echosounders (MBES)); magnetometers and gradiometers that have no acoustic output; and shallow- to medium-penetration sub-bottom profiling (SBP) equipment (*e.g.,* parametric sonars, compressed high-intensity radiated pulses (CHIRPs), boomers, sparkers) with operating frequencies below 180 kilohertz (kHz). No deep-penetration SBP surveys (*e.g.,* airgun or bubble gun surveys) will be conducted. Survey equipment will be deployed from as many as three vessels during the site characterization activities within the Lease area and ECR area.

Orsted assumes that vessels would generally conduct approximately 70 line km of survey effort per 24-hour operation period. On this basis a total of 350 vessel survey days are expected within Lease Areas OCS–A 0482, OCS–A 0519, and the associated ECR area. Water depths in the Lease Areas range from approximately 15 to 40 meters (m). Water depths within the ECR area

extend from the shoreline to approximately 40 m deep.

Acoustic sources planned for use during HRG survey activities by Orsted include the following. Survey equipment can either be towed, pole mounted, hull-mounted on the vessel (or on an ROV as noted above), or mounted on other survey equipment (*e.g.,* transponders): (Table 1):

- Shallow penetration, non-impulsive, intermittent, mobile, non-parametric SBPs (*i.e.,* CHIRP SBPs) are used to map the near-surface stratigraphy (top 0 to 10 m) of sediment below seabed. A CHIRP system emits sonar pulses that increase in frequency from approximately 2 to 20 kHz over time. The frequency range can be adjusted to meet project variables. These sources are typically mounted on a pole, either over the side of the vessel or through a moon pool in the bottom of the hull. The operational configuration and relatively narrow beamwidth of these sources reduce the likelihood that an animal would be exposed to the signal.
- Medium penetration SBPs (boomers) are used to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 Hz to 10 kHz frequency range. This system is commonly mounted on a sled and towed behind the vessel. Boomers are impulsive and mobile sources. The sound levels produced by this equipment type have the potential to result in Level B harassment of marine mammals; and
- Medium penetration SBPs (sparkers) are used to map deeper subsurface stratigraphy as need. Sparkers create acoustic pulses from 50 Hz to 4 kHz omnidirectionally from the source, and are considered to be impulsive and mobile sources. Sparkers are typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals. The sound levels produced by this equipment type have the potential to result in Level B harassment of marine mammals.

Operation of other survey equipment types is not reasonably expected to result in take of marine mammals and will not be discussed further beyond the brief summaries provided in the notice of proposed IHA (87 FR 15922; March 21, 2022).

Table 1 identifies representative survey equipment with the expected potential to result in exposure of marine mammals and thus potentially result in take. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection.

Table 1. Summary of Representative HRG Survey Equipment

Equipment	Reference for SL	Operating Frequency (kHz)	SL (SPL dB re 1 µPa m)	SL (SEL dB re 1 µPa^2 m^2 s)	SL (PK dB re 1 µPa m)	Pulse Duration (width) (ms)	Repetition Rate (Hz)	Beamwidth (degrees)
ET 216 (2000DS or 3200 top unit)	MAN	2–16 2–8	195	178	-	20	6	24
ET 424 3200-XS	CF	4–24	176	152	-	3.4	2	71
ET 512i	CF	0.7–12	179	158	-	9	8	80
GeoPulse 5430A	MAN	2–17	196	183	-	50	10	55
Teledyne Benthos Chirp III - TTV 170	MAN	2–7	197	185	-	60	15	100
Pangeo SBI	MAN	4.5–12.5	188.2	165	-	4.5	45	120
AA, Dura-spark UHD Sparker (400 tips, 500 J)[1]	CF	0.3–1.2	203	174	211	1.1	4	Omni
AA, Dura-spark UHD Sparker Model 400 x 400[4]	CF	0.3–1.2	203	174	211	1.1	4	Omni
GeoMarine, Dual 400 Sparker, Model Geo-Source 800[1,2]	CF	0.4–5	203	174	211	1.1	2	Omni
GeoMarine Sparker, Model Geo-Source 200-400[1,2]	CF	0.3–1.2	203	174	211	1.1	4	Omni
GeoMarine Sparker, Model Geo-Source 200 Lightweight[1,2]	CF	0.3–1.2	203	174	211	1.1	4	Omni
AA, triple plate S-Boom(700–1,000 J)[3]	CF	0.1–5	205	172	211	0.6	4	80

µPa = micropascal; AA = Applied Acoustics; CF = Crocker and Fratantonio (2016); CHIRP = compressed high-intensity radiated pulses; dB = decibel; EM = equipment mounted; ET = edgetech; J = joule; Omni = omnidirectional source; re = referenced to; PK = zero-to-peak sound pressure level; PM = pole mounted; SBI = sub-bottom imager; SEL = sound exposure level; SL = source level; SPL = root-mean-square sound pressure level; T = towed; TB = Teledyne benthos; UHD = ultra-high definition; WFA = weighting factor adjustment.

[1]The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems for the survey. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

[2]The AA Dura-spark (500 J, 400tips) was used as a proxy source.

[3]Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP-D700 and CSP-N). The CSP-D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP-N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

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Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Orsted was published in the **Federal Register** on March 21, 2022 (87 FR 15922). That proposed notice described, in detail, Orsted's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

During the 30-day public comment period, NMFS received comments from the Delaware Department of Resources and Environmental Control (DNREC), Oceana, and the Responsible Offshore Development Alliance (RODA). A few comments specifically addressed concerns regarding construction of a wind energy facility itself, which is outside the scope of NMFS' action considered herein. We do not specifically address those comments in further detail. All substantive comments, and NMFS' responses, are provided below, and the letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llc-marine-site.* Please see the letters for full detail and rationale for the comments.

Comment 1: DNREC recommends harp seals (*Pagophilus groenlandicus*) and hooded seals (*Cystophora cristata*) also be included within the list of potentially impacted species. DNREC states that it would be beneficial to include all species occurring in the area, regardless of the infrequency of their occurrence.

Response: NMFS agrees with DNREC that the occurrence of all species occurring in the survey area should be evaluated in our analysis. NMFS has evaluated the occurrence of harp seals and has included additional information on their potential occurrence offshore of Delaware in the Description of Marine Mammals in the Area of Specified Activities section below. However, based on the best available information, including information on local sightings, and the temporal and spatial occurrence of the species, the likelihood of a harp seal being encountered in the survey area is discountable, and NMFS is not authorizing the take of harp seals for Orsted's survey.

NMFS has further evaluated available information regarding the occurrence of hooded seals in the survey area. The limited data available support a conclusion that hooded seals occur rarely and irregularly in the survey area. DNREC did not provide any scientific data to support regular occurrence of hooded seals in the region and to quantify the potential for Level B harassment of hooded seals to occur and NMFS considers take of this species to be highly unlikely. Hooded seals are found at high latitudes in the North Atlantic and Arctic Oceans, breeding in ice packed areas. They spend a significant amount of time in deep waters, rarely hauling out along the coasts. Hooded seals are primarily found in Canada, although NMFS does acknowledge that a small number of individuals are increasingly being seen along the Atlantic coast. Due to their tendency to stay far offshore and as very few sightings have been documented along the Delaware coast, NMFS' evaluation has concluded that hooded seals are unlikely to be found within the survey area and are not discussed further in this document.

Comment 2: Oceana recommended that NMFS should require passive acoustic monitoring (PAM) at all times to maximize the probability of detection for North Atlantic right whales (NARWs), as well as other species and stocks. DNREC also expressed support for the use of PAM in combination with monitoring by protected species observers (PSOs), especially during nighttime operations.

Response: The commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 µPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral

harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARWs and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has previously provided discussions on why PAM is not a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (86 FR 21289, April 22, 2021 and 87 FR 13975, March 11, 2022 for examples).

Regarding monitoring for species that may be present yet go unobserved, NMFS recognizes that visual detection based mitigation approaches are not 100 percent effective. Animals are missed because they are underwater (availability bias) or because they are available to be seen, but are missed by observers (perception and detection biases) (*e.g.,* Marsh and Sinclair, 1989). However, visual observation remains one of the best available methods for marine mammal detection. Although it is likely that some marine mammals may be present yet unobserved within the harassment zone, all expected take of marine mammals has been appropriately authorized. For mysticete species in general, it is unlikely that an individual would occur within the estimated 141 m harassment zone and remain undetected. For NARW in particular, the required Exclusion Zone is 500 m and, therefore, it is even less likely that an individual would approach the harassment zone undetected.

Comment 3: Oceana objects to NMFS' renewal process regarding the extension of any 1-year IHA with a truncated 15-day public comment period, and suggested an additional 30-day public comment period is necessary for any renewal request.

Response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 2, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

The notice of the proposed IHA published in the **Federal Register** on January 27, 2022 (87 FR 4200) made clear that the agency was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. Because any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

Comment 4: Oceana remarked that NMFS must utilize the best available science, and further suggests that NMFS has not done so. Oceana specifically asserted that NMFS is not using the best available science with regards to the NARW population estimate and states that NMFS should be using the 336 estimate presented in the recent North Atlantic Right Whale Report Card (*https://www.narwc.org/report-cards.html*). Additionally, Oceana states that NMFS is not using the best available science with regard to NARW recent habitat usage patterns and should use up to date seasonality information that may differ from the March–April and November–December migration period cited in the notice, and that NMFS should fully consider the use of the area on the health and fitness of NARWs. Similarly, RODA urges NMFS to use the best available science including the most comprehensive models for estimating marine mammal take and developing robust mitigation measures.

Response: While NMFS agrees that the best available science should be used for assessing NARW abundance estimates, we disagree that the North Atlantic Right Whale Report Card (*i.e.,* Pettis *et al.,* 2022) study represents the best available estimate for NARW abundance. Rather the revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by commenters. However, NMFS relies on the SAR. Between the time of publication of the notice of proposed IHA and issuing this

IHA, NMFS updated its species web page to recognize the population estimate for NARWs as below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of NARWs or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Orsted's survey activities.

NMFS further notes that the commenters seem to be conflating the phrase ''best available data'' with ''the most recent data''. The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS's determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the SARs are peer reviewed by other scientific review groups prior to being finalized and published and that the North Atlantic Right Whale Report Card (Pettis *et al.,* 2022) does not undertake this process.

The commenters also noted their concern regarding NARW habitat usage and seasonality, stating that NMFS was not appropriately considering relevant information on this topic. While Orsted's survey specifically intersects migratory habitat for NARWs, the year-round ''core'' NARW foraging habitat is located much further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of NARWs indicate a nearly year-round presence (Oleson *et al.,* 2020). NMFS notes that prey for NARWs are mobile and broadly distributed throughout the survey area; therefore, NARW foraging efforts are not likely to be disturbed given the location of these planned activities in relation to the broader area that NARWs migrate through and northern areas where NARWs primarily forage. There is ample foraging habitat further north of this survey area that will not be ensonified by the acoustic sources used by Orsted, such as the Great South Channel and Georges Bank Shelf Break feeding biologically important area (BIA). Furthermore, and as discussed in the proposed notice, the spatial acoustic footprint of the survey is very small relative to the spatial extent of the available foraging habitat.

Lastly, as we stated in the proposed notice, any impacts to marine mammals are expected to be temporary and minor, given the relative size of the survey area compared to the overall migratory route leading to foraging habitat (which is not affected by the specified activity). Comparatively, the Lease Area is approximately 568 km^2 and the NARW migratory BIA is 269,448 km^2. Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 5: Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery, and state that chronic stress may result in stunted growth and energetic effects for NARWs. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of chronic stressors on the health and fitness of NARWs, as disturbance responses to NARWs could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

Response: NMFS agrees with Oceana that chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, etc. impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress response, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Orsted would create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determination presented in NMFS's negligible impact analyses. Because NARW's generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor (BIA of 269,448 km^2) compared with the survey area (568 km^2). Thus, the transitory nature of NARWs at this location means it is unlikely for any exposure to cause chronic effects as Orsted's planned survey area and ensonified zones are much smaller than the overall migratory corridor. Because of this, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARWs from Orsted's described survey activities.

Lastly, NMFS disagrees that the effects of Orsted's survey may contribute to stunted growth rates as suggested by Oceana's comments. The activities associated with Orsted's survey are outside the scope of activities described in the Steward *et al.* (2021) paper and NMFS does not expect impacts such as these to result from Orsted's described survey activities.

Comment 6: Oceana asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and NARWs in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. RODA similarly expressed concern regarding analysis of cumulative impacts.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338: September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under

section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Orsted was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island; the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; and the 2019 Orsted EA for survey activities offshore southern New England. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Orsted have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion for issuance of Orsted' IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the same geographic region have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued Garden State's 2021 IHA and Skipjack's 2021 IHA (86 FR 33664; June 25, 2021 and 86 FR 18943; April 12, 2021), which are substantially similar to those planned by Orsted, and its subsidiaries Skipjack and Garden State, under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes, that while issuance of this IHA is covered under a different consultation, this BiOp remains valid and the portions of the surveys currently planned by Orsted from 2022 to 2023 that are within the geographic scope of the 2013 BiOp (*i.e.,* potions in NJ) could have fallen under the scope of those analyzed previously.

Comment 7: RODA states that, to their knowledge, there are no resources easily accessible to the public to understand what authorizations are required for each of these activities (pre-construction surveys, construction, operations, monitoring surveys, etc.). RODA recommends that NMFS improve the transparency of this process and move away from what it refers to as a ''segmented phase-by-phase and project-by-project approach to IHAs.''

Response: The MMPA, and its implementing regulations, allows, upon request, the incidental take of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. NMFS responds to these requests by authorizing the incidental take of marine mammals if it is found that the taking would be of small numbers, have no more than a ''negligible impact' on the marine mammal species or stock, and not have an ''unmitigable adverse impact'' on the availability of the species or stock for subsistence use. NMFS emphasizes that an IHA does not authorize the activity itself but authorizes the take of marine mammals incidental to the ''specified activity'' for which incidental take coverage is being sought. In this case, NMFS is responding to the applicant, Orsted, and the specified activity described in their application and making necessary findings on the basis of what was provided in their application. The authorization of Orsted's activity (note, not the authorization of takes incidental to that activity) is not within the jurisdiction of NMFS. NMFS refers RODA to the Permitting Dashboard for Federal Infrastructure Projects for further information on timelines and proposed authorizations planned for application for each of these activities: *https://www.permits.performance.gov/.*

NMFS is required to consider applications upon request. To date, NMFS has not received any joint applications. While an individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas (see 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022), this is not applicable in this case. In the future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions.

Comment 8: RODA expressed concern from fishermen regarding the process for the authorization of marine mammal harassment takes in OSW activities in contrast to regulations for marine mammal take applied to the fishing industry.

Response: As required under the Marine Mammal Protection Act for activities other than commercial fisheries and detailed elsewhere in this notice, NMFS assessed the impacts of site characterization survey activities on marine mammals and their habitat and made the necessary findings to issue this IHA to Orsted. NMFS notes that the impacts of commercial fisheries on marine mammals and incidental take for said fishing activities are managed pursuant to the requirements of a different section of the MMPA (section 118) and, therefore, that these concerns are outside the scope of NMFS' action considered herein.

Comment 9: Oceana states that NMFS must make an assessment of which activities, technologies and strategies are truly necessary to provide information to inform development of Orsted's offshore wind project and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques. In general, Oceana stated that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods

to minimize sound levels from geophysical surveys.

Response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. Oceana does not make any specific recommendations of measures to add to the IHA. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgements regarding what may be appropriate techniques or technologies for an operator's survey objectives.

Comment 10: Oceana suggests that PSOs complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** notice and also as a requirement of the issued IHA.

Comment 11: Oceana recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 kn (18.5 km/hr) at all times due to the risk of vessel strikes to NARWs and other large whales.

Response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for ship strike resulting from Orsted's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. These mitigation measures, most of which were included in the proposed IHA and all of which are required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hr) or less speed restrictions in any seasonal management areas (SMA), dynamic management areas (DMA) or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hr) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn (18.5 km/hr) or less until 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

Comment 12: Oceana suggests that NMFS require vessels maintain a separation distance of at least 500 m from NARWs at all times.

Response: NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from NARWs at all times was included in the proposed **Federal Register** notice and was included as a requirement in the issued IHA.

Comment 13: Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

Response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, these activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Orsted, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 14: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

Response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Orsted, the vessel operators, the lead PSO, and any other relevant designees of Orsted operating under the authority of this IHA. The IHA also states that Orsted must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 15: Oceana stated that the IHA must include a requirement for all phases of the Orsted site characterization to subscribe to the highest level of transparency, including

frequent reporting to federal agencies, requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

Response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations. Orsted is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, and describes, assesses and compares the effectiveness of monitoring and mitigation measures. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. Further the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, Orsted must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System and to the U.S. Coast Guard, and that any discoveries of injured or dead marine mammals be reported by Orsted to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. All reports and associated data submitted to NMFS are included on the website for public inspection.

Comment 16: Oceana recommended increasing the Exclusion Zone to 1,000 m for NARWs.

Response: NMFS notes that the 500 m Exclusion Zone for NARWs required in the IHA already exceeds the modeled distance to the largest 160 dB Level B harassment isopleth distance (141 m during sparker use) by a substantial margin. Commenters do not provide a compelling rationale for why the Exclusion Zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a NARW Exclusion Zone that is significantly larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the Exclusion Zone is appropriate. Further, Level A harassment is not expected to result even in the absence of mitigation, given the characteristics of the sources planned for use. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Comment 17: Oceana recommends a shutdown requirement if a NARW or other ESA-listed species is detected in the clearance zone as well as a publically available explanation of any exemptions as to why the applicant would not be able to shut down in these situations.

Response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (87 FR 15922; March 21, 2022), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Exclusion Zone (EZ) while geophysical survey equipment is operational. There is no exemption for the shutdown requirement. In regards to reporting, Orsted must notify NMFS if a NARW is observed at any time by any survey vessels during surveys or during vessel transit. Additionally, Orsted is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. We note that if a right whale is detected within the Exclusion Zone before a shutdown is implemented, the right whale and its distance from the sound source, including if it is within the Level B harassment zone, would be reported in Orsted's final monitoring report and made publicly available on NMFS' website. Orsted is required to immediately notify NMFS of any sightings of NARWs and report upon survey activity information. NMFS believes that these requirements address the commenter's concerns.

Comment 18: Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

Response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (87 FR 15922; March 21, 2022) and this final IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Ramp-up must begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power must then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually. NMFS notes that ramp-up would not be required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable EZ.

Comment 19: RODA expressed concern regarding the potential for increased uncertainty in estimates of marine mammal abundance resulting from wind turbine presence during low aerial surveys and potential effects of NMFS' ability to continue using current low-flying survey methods to fulfill its mission of precisely and accurately assessing protected species.

Response: NMFS has determined that offshore wind development projects may impact several surveys carried out by its Northeast Fisheries Science Center (NEFSC), including aerial surveys for protected species. NEFSC has developed a federal survey mitigation program to mitigate the impacts to these surveys, and is in the early stages of implementing this program. However, this impact is outside the scope of analysis related to the authorization of take incidental to Orsted's specified activity under the MMPA.

Comment 20: RODA expressed concerns with the high amount of increased vessel traffic associated with the OSW projects throughout the region in areas transited or utilized by certain protected resources, as well as concern for vessel noise.

Response: Orsted did not request authorization for take incidental to vessel traffic during Orsted's marine site characterization survey. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey, and determined that the potential for vessel strike is so low as to be discountable. NMFS does not authorize any take of marine mammals incidental to vessel strike resulting from the survey. If Orsted were to strike a marine mammal with a vessel, this would be an unauthorized take and be in violation of the MMPA. This gives Orsted a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures called for in the IHA. Orsted proposed a very

conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to NARWs. Section 4(f) in the IHA contains a suite of non-discretionary requirements pertaining to ship strike avoidance, including vessel operation protocols and monitoring. To date, NMFS is not aware of site characterization vessel from surveys reporting a ship strike within the United States. When considered in the context of low overall probability of any vessel strike by Orsted vessels, given the limited additional survey-related vessel traffic relative to existing traffic in the survey area, the comprehensive visual monitoring, and other additional mitigation measures described herein, NMFS believes these measures are sufficiently protective to avoid ship strike. These measures are described fully in the Mitigation section below, and include, but are not limited to: Training for all vessel observers and captains, daily monitoring of NARW Sighting Advisory System, WhaleAlert app, and USCG Channel 16 for situational awareness regarding NARW presence in the survey area, communication protocols if whales are observed by any Orsted personnel, vessel operational protocol should any marine mammal be observed, and visual monitoring.

The potential for impacts related to an overall increase in the amount of vessel traffic due to OSW development is separate from the aforementioned analysis of potential for vessel strike during Orsted's specified survey activities. For more information, please see the response to comment 7 discussing cumulative impacts.

Comment 21: RODA defers to the Marine Mammal Commission's previous comments on this matter, expressing that ''they are more knowledgeable on impacts of pile driving and acoustics to marine mammals''.

Response: In response to RODA's deferral to the Marine Mammal Commission, the Commission, the agency charged with advising federal agencies on the impacts of human activity on marine mammals, has questioned in its previous public comment whether incidental take authorizations are even necessary for surveys utilizing HRG equipment (*i.e.,* take is unlikely to occur), and has subsequently informed NMFS that they would no longer be commenting on such actions, including Orsted's activity described herein. Additionally, comments related to pile driving and OSW construction are outside the scope of this IHA and therefore are not discussed.

Comment 22: RODA defers to the September 9, 2020 letter submitted by seventeen Environmental NRGs and echoes their concerns.

Response: NMFS refers RODA to the **Federal Register** notice 85 FR 63508 (October 8, 2020) for previous responses to the Environmental NGOs' previous letter of which RODA references and defers expertise to.

Comment 22: RODA expressed concern that negative impacts to local fishermen and coastal communities as a result of a potentially adverse impact to marine mammals (*e.g.,* vessel strike resulting in death or severe injury) were not mentioned nor evaluated in ''the LOA request for this project''. (NMFS notes that its action here is a response to Orsted's request for an IHA, which is appropriate, rather than an LOA.) RODA also reiterated concern about the lack of adequate analysis of individual and cumulative impacts to marine mammals, noting existing fishery restrictions as a result of other NARW protections.

Response: Neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (*e.g.,* fisheries) or coastal communities from issuance of an ITA. Nevertheless, as detailed in the proposed IHA notice and in our responses to comments 11 and 20, NMFS has analyzed the potential for adverse impacts such as vessel strikes to marine mammals, including NARWs, as a result of Orsted's planned site characterization survey activities and determined that no serious injury or mortality is anticipated. In fact, as discussed in the Negligible Impact Analysis and Determination section, later in this document, no greater than low-level behavioral harassment is expected for any affected species. For NARW in particular it is considered unlikely, as a result of the required precautionary shutdown zone (*i.e.,* 500 m versus the estimated maximum Level B harassment zone of 141 m), that the authorized take would occur at all. Thus, NMFS would also not anticipate the impacts RODA raises as a result of issuing this IHA for site characterization survey activities to Orsted. In regards to cumulative impacts, we defer back to our response to comment 6.

Comment 23: RODA expressed interest in understanding the outcome if the number of actual takes exceed the number authorized during construction of an offshore wind project (*i.e.,* would the project be stopped mid-construction or operation), and how offshore wind developers will be held accountable for impacts to protected species such that impacts are not inadvertently assigned to fishermen, should they occur. Lastly, RODA maintains that the OSW industry must be accountable for incidental takes from construction and operations separately from the take authorizations for managed commercial fish stocks.

Response: It is important to recognize that an IHA does not authorize the activity but authorizes take of marine mammals incidental to the activity. As described in condition 3(b) and (c) of the IHA, authorized take, by Level B harassment only, is limited to the species and numbers listed in Table 1 of the final IHA, and any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of the IHA. As described in condition 4(e)(vii), shutdown of acoustic sources is required upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the Level B harassment zone as described in Table 2 of the IHA.

It is unclear why RODA would be concerned that the OSW developers are responsible for their own impacts and ''the burdens of those are not also assigned to fishermen''. Fishing impacts generally center on entanglement in fishing gear, which is a very acute, visible, and severe impact. In contrast, the pathway by which impacts occur incidental to construction or site characterization survey activities, such as those planned by Orsted here, is primarily acoustic in nature. Regardless, NMFS reiterates that this IHA does not authorize take incidental to construction activities, but site characterization survey activities, and any take beyond that authorized would be in violation of the MMPA. It is BOEM's responsibility as the permitting agency to make decisions regarding ceasing Orsted's overall offshore wind development activities, not NMFS. If the case suggested by RODA does occur, NMFS would work with BOEM and Orsted to determine the most appropriate means by which to ensure compliance with the MMPA. As noted previously in response to Comment 8, the impacts of commercial fisheries on marine mammals and incidental take for said fishing activities are indeed managed separately from those of non-commercial fishing activities such as offshore wind site characterization surveys (MMPA section 118).

Changes From the Proposed to the Final IHA

In response to DNREC's request to incorporate the occurrence of additional pinnipeds in our analysis, a description of harp seals has been added to the Description of Marine Mammals in the Area of Specified Activities section as well as details pertaining to their potential occurrence in Orsted's planned survey area used in our analysis. Elsewise, no changes have occurred from the proposed to final IHA.

Since publication of the notice of proposed IHA, NMFS has acknowledged that the population estimate of NARWs is now under 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). However, as discussed in our response to Comment #4 above, NMFS has determined that this change in abundance estimate would not change the estimated take of NARWs or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Orsted's survey activities. The status and trends of the NARW population remain unchanged.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and is authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2021). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2020 SARs (Hayes *et al.,* 2021) and the draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE SURVEY AREA THAT MAY BE AFFECTED BY ORSTED'S ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale ..	*Eubalaena glacialis*	Western Atlantic	E, D, Y	368 (0, 364, 2019) [5]	0.7	7.7
Family Balaenopteridae (rorquals):						
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E, D, Y	6802 (0.24, 5573, 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia	E, D, Y	6292 (1.02, 3098, 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-,—, N	21,968 (0.31, 17002, 2016).	170	10.6
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-,—, Y	1396 (0, 1380, 2016)	22	12.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E, D, Y	4349 (0.28, 3451, See SAR).	3.9	0
Family Delphinidae:						
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	-, -, N	93,233 (0.71, 54443, See SAR).	544	27
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-, -, N	39,921 (0.27, 32032, See SAR).	320	0
Common bottlenose dolphin.	*Tursiops truncatus*	Western North Atlantic Offshore.	-, -, N	62,851 (0.23, 51914, See SAR).	519	28
		Western North Atlantic Northern Migratory Coastal.	-, -, Y	6639 (0.41, 4759, 2016)	48	12.2–21.5
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-, -, N	39,215 (0.3, 30627, See SAR).	306	29
Short-finned pilot whale	*Globicephala macrorhynchus* ..	Western North Atlantic	-, -, Y	28,924 (0.24, 23637, See SAR).	236	136
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-, -, N	35,215 (0.19, 30051, 2016).	301	34

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE SURVEY AREA THAT MAY BE AFFECTED BY ORSTED'S ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Common dolphin	*Delphinus delphis*	Western North Atlantic	-, -, N	172,974 (0.21, 145216, 2016).	1,452	390
Family Phocoenidae (porpoises).						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -, N	95,543 (0.31, 74034, 2016).	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals).						
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic	-, -, N	27300 (0.22, 22785, 2016).	1,389	4453
Harbor seal	*Phoca vitulina*	Western North Atlantic	-, -, N	61,336 (0.08, 57637, 2018).	1,729	339

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The NMFS stock abundance estimate (and associated PBR value) applies to the U.S. population only, however the actual stock abundance is approximately 451,431 (including animals in Canada). The annual mortality and serious injury (M/SI) value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species webpage to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

As indicated above, all 16 species (with 17 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While harp seals have been documented in the area, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. In addition to what is included in Sections 3 and 4 of Orsted's application, the SARs, and NMFS' website, further detail informing the baseline for select species (*e.g.,* information regarding current Unusual Mortality Events (UMEs)) was provided in the notice of proposed IHA (87 FR 15922; March 21, 2022), and is not repeated here. No new information is available to the species discussed in the notice of proposed since publication of that notice. Information regarding presence and habitat of harp seals is provided below.

Harp seals are highly migratory and occur throughout much of the North Atlantic and Arctic Oceans (Hayes *et al.,* 2021). Breeding occurs between late-February and April and adults then assemble on suitable pack ice to undergo the annual molt. The migration then continues north to Arctic summer feeding groups. Harp seal occurrence in the survey area is considered rare. However, since the early 1990s, number of sightings and strandings have been increasing off the east coast of the United States from Maine to New Jersey (Katona *et al.,* 1993; Rubinstein 1994; Stevick and Fernald 1998; McAlpine 1999; Lacoste and Stenson 2000; Soulen *et al.,* 2013). Between 2015 and 2019, 5 harp seal strandings were documented in Delaware and 15 were documented in New Jersey (Hayes *et al.,* 2021). These extralimital appearances usually occur in January through May (Harris *et al.,* 2002), when the western North Atlantic stock is at its most southern point of migration. Harp seals are not expected to occur in the survey area, and NMFS has not authorized take of this species.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for Mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 16 marine mammal species (14 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), nine are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The notice of proposed IHA included a summary of the ways that Orsted's specified activity may impact marine mammals and their habitat (87 FR 15922; March 21, 2022). Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the Mid-Atlantic region, including Delaware waters (*e.g.,* 82 FR 20563, May 3, 2017; 85 FR 36537, June 17, 2020; 85 FR 37848, June 24, 2020; 85 FR 48179, August 10, 2020; 86 FR 11239, February 24, 2021, 86 FR 28061, May 25, 2021). No significant new information is available, and we refer the reader to these documents rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Orsted's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. The notice of proposed IHA (87 FR 15922;March 21, 2022) also provided background information regarding active acoustic sound sources and acoustic terminology, which is not repeated here.

The potential effects of Orsted's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which informs both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor is authorized. Consideration of the anticipated effectiveness of the measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral

disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for impulsive (*e.g.,* sparkers and boomers) evaluated here for Orsted's activity.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Orsted's HRG survey includes the use of impulsive sources. However, as described above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources considered here, and the potential for Level A harassment is not evaluated further in this document. Please see Orsted's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Orsted did not request authorization of take by Level A harassment, and no take by Level A harassment is authorized by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purpose of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and some directionality to refine estimated ensonified zones. Orsted used NMFS's methodology, using the source level and operation mode of the equipment planned for used during the survey, to estimate the maximum ensonified area over a 24-hr period also referred to as the harassment area (Table 1). Potential takes by Level B harassment are estimated within the ensonified area (*i.e.,* harassment area) as an SPL exceeding 160 dB re 1 µPa for impulsive sources (*e.g.,* sparkers, boomers) within an average day of activity.

The harassment zone is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. The harassment area was calculated per the following formula:

Stationary Source: Harassment zone = πr^2

Mobile Source: Harassment zone = (Distance/day 2r) + πr^2

Where r is the linear distance from the source to the isopleth for the Level B harassment threshold and day = 1 (*i.e.,* 24 hours).

The estimated potential daily active survey distance of 70 km was used as the estimated areal coverage over a 24-hr period. This distance accounts for the vessel traveling at roughly 4 kn (7.4 km/hr) and only for periods during which equipment <180 kHz is in operation. A vessel traveling 4 kn (7.4 km/hr) can cover approximately 110 km per day; however, based on data from 2017, 2018, and 2019 surveys, survey coverage over a 24-hour period is closer to 70 km per day as a result of delays due to, *e.g.,* weather, equipment malfunction. For daylight only vessels, the distance is reduced to 35 km per day; however, to maintain the potential for 24-hr surveys, the corresponding Level B harassment zones provide in Table 4 were calculated for each source based on the Level B threshold distances within a 24-hour (70 km) operational period.

TABLE 4—CALCULATED HARASSMENT ZONES ENCOMPASSING LEVEL B [1] THRESHOLDS FOR EACH SOUND SOURCE OR COMPARABLE SOUND SOURCE CATEGORY

Source	Level B harassment isopleths (m)	Level B harassment zone (km^2) [2]
ET 216 CHIRP	9	1.3
ET 424 CHIRP	4	0.6
ET 512i CHIRP	6	0.8
GeoPulse 5430	21	2.9
TB CHIRP III	48	6.7
Pangeo SBI	22	3.1
AA Triple plate S-Boom (700–1,000 J)	34	4.8
AA, Dura-spark UHD Sparkers	141	[3] 19.8
GeoMarine Sparkers	141	[3] 19.8

AA = Applied Acoustics; CHIRP = compressed high-intensity radiated pulses; ET = edgetech; HF = high-frequency; J = joules; LF = low-frequency; MF = mid-frequency; PW = phocid pinnipeds in water; SBI = sub-bottom imager; SBP = sub-bottom profiler; TB = Teledyne benthos UHD = ultra-high definition.

[1] The applicant calculated both Level A and B isopleths to comprehensively assess the potential impacts of the predicted source operations as required for this Application. However, as described previously throughout this document, Level A takes are not expected and thus, are not authorized, therefore they are not discussed in this document. Please refer to Orsted's application for more information.

[2] Based on maximum threshold distances provided in Table 4 of Orsted's application and calculated for Level B root-mean-square sound pressure level thresholds.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020) represent the best available information regarding marine mammal densities in the survey area. The density data presented by Roberts *et al. (*2016, 2017, 2018, 2020) incorporates aerial and shipboard line-transect data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2020, 2021). The updated models incorporate sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For exposure analysis, density data from Roberts *et al.,* (2016, 2017, 2018, 2020, 2021) were mapped using a geographic information system (GIS). Density grid cells that included any portion of the survey Area were selected for all survey months (see Figure 3 of Orsted's application). For the survey area (*i.e.,* Lease Areas OCS–A–0482, 5219), the densities for each species as reported by Roberts *et al.,* 2016, 2017, 2018, 2020, 2021) were averaged by month; those values were then used to calculate the mean annual density for each species within the survey Area. Estimated mean monthly and annual densities (animals per km^2) of all marine mammal species that may be taken by the survey are shown in Table 7 of Orsted's application. The mean annual density values used to estimate take numbers are shown in Table 5 below.

Due to limited data availability and difficulties identifying individuals to species level during visual surveys, individual densities are not able to be provided for all species and they are instead grouped into ''guilds'' (Roberts *et al.,* 2021). These guilds include pilot whales, and seals. Long- and short-finned pilot whales are difficult to distinguish during shipboard surveys so individual habitat models were not able to be developed and thus, densities are assumed to apply to both species. Similarly, Roberts *et al.* (2018) produced density models for all seals but did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the survey areas, it was assumed that the mean annual density could refer to either of the represented species and was, therefore, divided equally between the two species.

For bottlenose dolphin densities, Roberts *et al.,* 2016, 2017, 2018, 2020, 2021 does not differentiate by stock. As previously discussed, both the northern migratory coastal stock and the Western North Atlantic offshore stock are expected to occur in the survey Area. To estimate densities for both stocks, the density blocks from within the survey Area were divided using the 20 m isobath (Hayes *et al.* 2021). Therefore, any density blocks located between the coastline and the 20 m isobath were attributed to the migratory coastal stock, and density blocks beyond this isobath were attributed to the offshore stock (see Table 5 for average annual densities calculated).

TABLE 5—ESTIMATED AVERAGE ANNUAL DENSITIES (ANIMALS PER km^2) OF POTENTIALLY AFFECTED MARINE MAMMALS WITHIN THE SURVEY AREA BASED ON MONTHLY HABITAT DENSITY MODELS

[Roberts *et al.,* 2017, 2018, 2020, 2021]

Species	Average annual density (km^2)
Fin whale	0.001
Sei Whale	0
Minke Whale	0.0003
Humpback whale	0.0005
North Atlantic Right Whale	0.0017
Sperm Whale	0.0001
Atlantic White-Sided Dolphin	0.0015
Atlantic Spotted Dolphin	0.0007
Bottlenose Dolphin (Offshore) [1]	0.0569
Bottlenose Dolphin (Migratory) [1]	0.3972
Long-finned Pilot Whale [2]	0.0004
Short-Finned Pilot Whale [2]	0.0004
Risso's Dolphin	0
Common Dolphin	0.0101
Harbor Porpoise	0.0085
Gray Seal [3 4]	0.0007
Harbor Seal [3 4]	0.0007

[1] Bottlenose dolphin stocks were delineated based on the 20-m isobath as identified in NMFS 2021 Stock Assessment Report; all density blocks falling inshore of the 20-m depth contour were assumed to belong to the migratory coastal stock, and those beyond this depth were assumed to belong to the offshore stock.

[2] Roberts (2021) only provides density estimates for ''generic'' pilot whales, so individual densities for each species are unavailable and densities were therefore assumed to apply to both species as both species have the same potential to occur in the survey area.

[3] Seal densities are not given by individual months or species, instead, seasons are divided as summer (June, July, August) and Winter (September–May) and applied to ''generic'' seals; as a result, reported seasonal densities for spring and fall are the same and are not provided for each species (Roberts, 2021) (See Table 7 in Orsted's application).

[4] Data used to establish the density estimates from Roberts (2021) are based on information for all seal species that may occur in the Western North Atlantic (*e.g.,* harbor, gray, hooded, harp). However, only the harbor seal and gray seal are reasonably expected to occur in the survey area, and the densities were split evenly between both species.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

For most species, the potential Level B harassment exposures were estimated by multiplying the average annual density of each species (Table 5) within the Lease Area and ECR area by the largest daily harassment zone (19.8 km^2) (Table 4). That product was then multiplied by the number of operating vessel days (350), and the product is rounded to the nearest whole number:

Estimated take = species density × harassment zone × # of Survey Days

For bottlenose dolphin densities, Roberts *et al.,* (2016a, 2016b, 2017, 2018, 2020) does not differentiate by individual stock. The WNA offshore stock is assumed to be located in depths exceeding the 20 m isobath, while the WNA Northern migratory coastal stock is assumed to be found in shallower depths than the 20 m isobath north of Cape Hatteras (Reeves *et al.,* 2002; Waring *et al.,* 2016). The maximum potential Level B harassment takes calculated for each stock of bottlenose

dolphins are based on the full survey duration occurring inside or outside the 20 m isobath; however only a portion of the survey will occur in each area. At this time, Orsted does not know the exact number of survey days that may occur within each area, and could not differentiate the maximum number of calculated instances of take (2,752, calculated for the migratory stock) between the two stocks of bottlenose dolphins potentially present during the survey activities. Orsted therefore requested, and NMFS authorizes, 2,752 instances of take of bottlenose dolphins, regardless of stock.

No takes were calculated for sei whale, sperm whale, or Risso's dolphin; however, based on anticipated species distributions and data from previous surveys in the same general area it is possible that these species could be encountered. Therefore, Orsted requested, and NMFS authorizes, takes of these species based on estimated group sizes (Kenney and Vigness-Raposa, 2010; Barkaszi and Kelly, 2019). For common dolphins, only 70 takes were calculated. However, draft Protected Species Observer (PSO) reports from from the ongoing Garden State and Skipjack surveys near the action area and completed surveys from 2018 through 2020 indicate the potential for more common dolphins to be encountered in the area. Therefore, Orsted requested, and NMFS authorizes, take of 400 common dolphins. Calculated exposure estimates and take authorizations are shown in Table 6.

TABLE 6—AUTHORIZED AMOUNT OF TAKING, BY LEVEL B HARASSMENT ONLY, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Abundance	Level B takes [a]	Max percent of population
Low-frequency cetaceans:				
Fin whales	Western North Atlantic	6,802	7	0.10
Sei whales	Nova Scotia	6,292	0 (1)	0.02
Minke whales	Canadian Eastern Coastal	21,968	2	0.01
Humpback whales	Gulf of Maine	1,396	4	0.29
North Atlantic right whale	Western Atlantic	368	11	2.99
Mid-frequency cetaceans:				
Sperm whale	North Atlantic	4,349	0 (3)	0.07
Atlantic white-sided dolphin	Western North Atlantic	93,233	10 (50)	0.05
Atlantic spotted dolphin	Western North Atlantic	39,921	5 (15)	0.04
Common bottlenose dolphin [b]	WNA Offshore	62,851	[c] 2,752	4.38
	WNA Northern Migratory Coastal	6,639	.....	41.45
Pilot whales	Short-finned	28,924	3 (20)	0.07
	Long-finned	39,215	3 (20)	0.05
Risso's dolphin	Western North Atlantic	35,215	0 (30)	0.09
Common dolphin	Western North Atlantic	172,974	70 (400)	0.23
High-frequency cetaceans:				
Harbor porpoise	Gulf of Maine/Bay of Fundy	95,543	82	0.09
Pinnipeds:				
Gray seal	Western North Atlantic	27,300	4	0.01
Harbor seal	Western North Atlantic	61,336	4	0.01

a. Parentheses denote take authorization where different from Orsted's calculated take estimates. Calculated takes were adjusted for the take authorization in one of two ways: (1) For species for which calculated take was significantly less than the number of individuals reported in the available monitoring reports and any available draft data (*e.g.,* ongoing surveys) in the area, the total number of individuals reported were used for take requests; (2) For species with no calculated takes, or takes were less than mean group size, requested takes were based the mean group sizes derived from the following references:

- Sei whale: Kenney and Vigness-Raposa, 2010
- Sperm whale: Barkaszi and Kelly, 2018
- Atlantic white-sided dolphin: NMFS, 2021
- Atlantic spotted dolphin: NMFS, 2021
- Pilot whales: Kenney and Vigness-Raposa, 2010Risso's dolphin: Barkaszi and Kelly, 2018

b. Take estimate is based on the maximum number of calculated instances of take for either stock and is assumed to apply to all bottlenose dolphins potentially present in the survey area. Therefore takes could consist of individuals from either the Offshore or the Northern Migratory Coastal stock. Although unlikely, for purposes of calculating max percentage of population, we assume all takes could be allocated to either stock.

c. Assumes multiple repeated takes of same individuals from each stock. Please see the Small Numbers section for additional information.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of

accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

Mitigation for Marine Mammals and Their Habitat

The following mitigation measures will be implemented during Orsted's marine site characterization surveys. Pursuant to section 7 of the ESA, Orsted will also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS Greater Atlantic Regional Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (see NOAA GARFO, 2021; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal EZ will be established around the HRG survey equipment and monitored by NMFS-approved PSOs:

- 500 m EZ for NARWs during use of acoustic sources <180 kHz (*e.g.,* Sparkers, Non-parametric sub-bottom profilers); and
- 100 m EZ for all other marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Start Clearance

Marine mammal clearance zones will be established around the HRG survey equipment and monitored by PSOs:

- 500 m for all ESA-listed marine mammals; and
- 100 m for all other marine mammals.

Orsted will implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-star clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. The ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. Operators should ramp-up sources to half power for 5 minutes and then proceed to full power.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species).

Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment will be required if a marine mammal is sighted entering or is within its respective exclusion zone. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operatory should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species).

If species for which authorization has not been granted, or, a species for which authorization has been granted but the authorization number of takes have been met, approaches or is observed within the Level B harassment zone (Table 4), shutdown will occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if SOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones. If the acoustic source is shut down for a period longer than 30 minutes, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for pinnipeds and for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops.* Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e,.* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped is detected in the exclusion zone and belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* echosounders) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs).

Vessel Strike Avoidance

Orsted must adhere to the following measures except in the case where compliance will create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel

strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena, and (2) broadly identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;

- All survey vessels, regardless of size, must observe a 10 kn (18.5 km/hr) speed restriction in specified areas designated by NMFS for the protection of NARWs from vessel strikes including SMAs and DMAs when in effect;
- Members of the monitoring team will consult NMFS NARW reporting system and Whale Alert, as able, for the presence of NARWs throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA;
- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 kn (18.5 km/hr) or less at all times;
- All vessels must reduce their speed to 10 kn (18.5 km/hr) or less when mother/calf pairs, pods, or large assemblages of any species of cetaceans is observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m from right whales and other ESA-listed large whales;
- If a whale is observed but cannot be confirmed as a species other than a right whale or other ESA-listed large whale, the vessel operator must assume that it is a right whale and take appropriate action;
- All vessels must maintain a minimum separation distance of 100 m from non-ESA listed whales;
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel);
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered to by NMFS, NMFS has determined that the mitigation measures provide the means of effective the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Orsted will employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specified duties in support of approved, independent PSOs on smaller vessels with limited crew operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum

of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) will ensure 360 degree visual coverage around the vessel from the most appropriate observation posts and will conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observations per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals will be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology will be used. Position data will be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state BSS) 3 or less), to the maximum extent practicable, PSOs will also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates, times, and locations of survey operations; dates and times of observations, location and weather, details of marine mammal sightings (*e.g.,* species, numbers, behaviors); and details of any observed marine mammal behavior that occurs (*e.g.,* notes behavioral disturbances). For more detail on the monitoring requirements, see Condition 5 of the issued IHA.

Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a draft comprehensive report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. A final report must be submitted within 30 days following any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Corcoran@noaa.gov*. The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port names;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Orsted must immediately report sighting information to the NMFS NARW Sighting Advisory System: (866) 755–6622. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Orsted personnel discover an injured or dead marine mammal, Orsted will report the incident to the NMFS Office of Protected Resources OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report will include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in this activities covered by the IHA, Orsted will report the incident to NMFS OPR and the NMFS New/England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report will include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels). To avoid repetition, our analysis applies to all species listed in Table 6, given that NMFS expects the anticipated effects of the survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the NARW—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality will occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes will be in the form of Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, 2021). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations and the estimated small size of the Level A harassment zones.

In addition to being temporary, the maximum expected harassment zone around the survey vessel is 141 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. The survey area lies significantly south (over 250 miles (402 km)) of where Biologically Important Areas are defined for fin and humpback whales. Therefore, they are not considered to be ''nearby'' the survey area and are not discussed further. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. The survey area overlaps with a migratory corridor Biologically Important Area (BIA) for NARWs (effective March–April; November–December) that extends from Massachusetts to Florida (LaBrecque *et al.,* 2015). Off the coast of Delaware, this migratory BIA extends from the coast to beyond the shelf break. Due to the fact that the survey activities will be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified

area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Orsted's activities. Additionally, only very limited take by Level B harassment of NARW has been requested and is being authorized by NMFS as HRG survey operations are required to maintain a 500 EZ and shutdown if a NARW is sighted at or within the EZ. The 500 m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful sources (*i.e.,* GeoMarine Sparkers, AA Dura-spark UHD Sparkers, AA Triple plate S-Boom) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected, nor authorized, due to the small PTS zones associated with HRG equipment types planned for use. NMFS does not anticipate NARW takes that result from the survey activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammals With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Orsted's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or severity of authorized takes for all species listed in Table 6, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals will only be exposed briefly to a small ensonified area that might result in take. Additionally, the required mitigation measures will further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be of Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for NARWs, the activities will occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth (141 m), which minimizes the effects of the take on the species; and
- The mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than 5 percent of the abundance of the affected stocks for these species, see Table 6) except for the WNA northern migratory coastal stock of bottlenose dolphins. The figures presented in Table 6 are likely conservative estimates as they assume all takes are of different individual animals which is likely not to be the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified. This is the particularly the case for bottlenose dolphins.

As mentioned above, there are two bottlenose dolphin stocks that could occur in the survey area: The WNA Offshore and WNA northern migratory coastal stocks. Given the uncertainty regarding the number of days Orsted's survey may be within the 20 m isobath, the authorization of 2,752 instances of take by Level B harassment is not allocated to a specific stock but rather could be of either stock. However, based on the stocks' respective occurrence in the area and the consideration of

various factors as described below, we have determined that the number of individuals taken will comprise of less than one-third of the best available population abundance estimate of either stock. Detailed descriptions of the stocks' ranges have been provided in the Description of Marine Mammals in the Area of Specified Activities section.

Both the northern migratory and offshore stocks have expansive ranges and are the only dolphin stocks thought to make broad-scale, seasonal migrations in the coastal waters of the North Atlantic. Given the large ranges associated with these two stocks, it is unlikely that large segments of either stock would consistently remain in the survey area. The majority of both stocks are likely to be found widely dispersed across their respective habitat ranges, and individuals within each stock migrate on a seasonal basis.

The northern migratory stock spans from the shelf waters of Florida to Long Island, New York and experience spatiotemporal overlap with several other bottlenose dolphin stocks in the Western North Atlantic. The stock is best defined by its distribution during summer water months (July and August), when it overlaps with the fewest stocks, during which it occupies coastal waters from the shoreline to approximately the 20-m isobath between Assateague, Virginia and Long Island, New York (Hayes *et al.,* 2021). However, during the winter months (*e.g.,* January and February), the stock occupies coastal waters from approximately Cape Lookout, North Carolina to the North Carolina/Virginia border. A study of tagged individuals found that four dolphins off the coast of New Jersey in the late summer moved south to North Carolina and inhabited waters near and just south of Cape Hatteras during cold water months. These animals then returned to the coastal waters of New Jersey in the following warm weather months (Garrison *et al.,* 2017). Additionally, during aerial and ship surveys off the New Jersey coast in 2008 and 2009, no sightings of common bottlenose dolphins were made during November through February, and bottlenose dolphins were sighted from early March to mid-October and were most abundant during May-August. Therefore, the stock is not expected to be present in its entirety year round in the survey area.

Further, many of the dolphin observations in the Delaware Bay and South of Cape May, NJ are likely repeated sightings of the same individuals. A by Toth *et al.,* (2010) conducted 73 boat-based photo-identification surveys in southern New Jersey near the Bay from 2003–2005 and found that of the 205 individuals identified, 44 percent were sighted multiple times within or among the years. Multiple sightings of the same individual would considerably reduce the number of individual animals that are taken by harassment.

The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Band to the Florida Keys (Hayes *et al.,* 2021). There is suspected overlap of the two stocks south of Cape Hatteras, North Carolina to some degree.

In summary and as described above, the following factors primarily support our determination regarding the incidental take of small numbers of the affected stocks of a species or stock:

- The take of marine mammal stocks comprises less than 5 percent of any stock abundance (with the exception of the northern migratory stock of bottlenose dolphins);
- Potential bottlenose dolphin takes in the survey area are likely to be allocated between both distinct stocks;
- Bottlenose dolphin stocks in the survey area have extensive ranges and it would be unlikely to find a high percentage of individuals from either stock concentrated in a relatively small area such as the survey area;
- Many of the takes would likely be repeats of the same animals, especially during summer months.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The consultation concluded that NMFS' issuance of incidental take authorization related to these activities are not likely to adversely affect ESA-listed marine mammals.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Orsted and its designees for the potential harassment of small numbers of 16 marine mammal species incidental to their marine site characterization survey offshore of Delaware, which includes the previously explained mitigation, monitoring and reporting requirements.

Dated: May 11, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10630 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC028]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Snapper Grouper Committee; Dolphin Wahoo Committee; and Citizen Science Committee. The meeting week will also include an informal public Question and Answer (Q&A) session, formal public comment session, a public hearing, and a meeting of the Full Council.

DATES: The Council meetings will be held from 8:30 a.m. on Monday, June 13, 2022, until 12 p.m. on Friday, June 17, 2022.

ADDRESSES: *Meeting address:* The meeting will be held at the Key West Marriott Beachside, 3841 N Roosevelt Blvd., Key West, FL 33040; phone: (305) 296–8100. The meeting will also be available via webinar. Registration is required. See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/*. Webinar registration links for the meeting will also be available from the Council's website.

Public comment: Public comment on agenda items may be submitted through the Council's online comment form available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/*. Comments will be accepted from May 27, 2022, until June 17, 2022. These comments are accessible to the public, part of the Administrative Record of the meeting, and immediately available for Council consideration.

The items of discussion in the individual meeting agendas are as follows:

Council Session I, Monday, June 13, 2022, 8:30 a.m. Until 10:30 a.m. (Closed Session)

The Council will review applications for its advisory panels, Scientific and Statistical Committee (SSC), and Socio-Economic Panel (SEP) and consider appointments. The Council will also review nominations for the 2021 Law Enforcement Officer of the Year.

Council Session I, Monday, June 13, 2022, 10:30 a.m. Until 5 p.m. (Open Session)

The Council will receive reports from state agencies, Council liaisons, NOAA Office of Law Enforcement, and the U.S. Coast Guard. The Council will review input from the SEP on a data-gathering tool to inform sector allocations, review an options paper for the Commercial Electronic Logbook Amendment, review the Acceptable Biological Catch Control Rule Amendment, and receive a presentation from NOAA Fisheries on progress towards meeting the Council's research recommendations.

Snapper Grouper Committee, Tuesday, June 14, 2022, 8:30 a.m. Until 5 p.m. and Wednesday, June 15, 2022, From 8:30 a.m. Until 3:45 p.m.

The Committee will review input received on Snapper Grouper Regulatory Amendment 35 (Release Mortality Reduction and Red Snapper Catch Levels) from its Snapper Grouper Advisory Panel (AP) and the SSC and receive an overview of options for the amendment. The Committee will provide further guidance on actions to explore in the amendment to reduce the number of dead releases in the fishery and improve survival of released fish.

The Committee will review Snapper Grouper Amendment 53 addressing management of Gag, consider recommendations from the AP, and receive an overview of the amendment and analyses to date. The Committee will review Snapper Grouper Amendment 52, addressing management of golden tilefish and blueline tilefish, and Amendment 51, addressing management of snowy grouper. The Committee will consider recommendations from the AP, receive an overview of the amendments and analyses to date, and consider approving the amendments for public hearings.

The Committee will consider recommendations from its AP on Snapper Grouper Amendment 49, addressing management of greater amberjack, and receive an overview and update on analyses to date. A public hearing for Snapper Grouper Amendment 49 will be held as part of the public comment period scheduled for Wednesday, June 15, at 4 p.m. Finally, the Committee will receive input from the AP on items not addressed on the agenda, receive an update on the South Atlantic Reef Fish Observer Coverage Expansion, and review any Exempted Fishery Permits if needed.

Informal Q&A Session, Tuesday, June 14, 2022, 5 p.m. Until 6 p.m.

The Council will host an informal Q&A for members of the public to discuss issues relevant to federal fisheries management in the South Atlantic region.

Formal Public Comment, Wednesday, June 15, 2022, 4 p.m.—Public comment will be accepted from individuals attending the meeting in person and via webinar on all items on the Council meeting agenda. The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

Dolphin Wahoo Committee, Thursday, June 16, 2022, 8:30 a.m. Until 12 p.m.

The Committee will receive recommendations from its Dolphin Wahoo AP on Regulatory Amendment 3 to the Dolphin Wahoo Fishery Management Plan for the Atlantic. The draft amendment currently includes options to address size limits and recreational retention limits for Dolphin. The Committee will also consider AP input on items not on the agenda and receive a presentation from NOAA Fisheries on the Development of Empirical Management Procedures for Dolphin.

Citizen Science Committee, Thursday, June 16, 2022, 1:30 p.m. Until 3:30 p.m.

The Committee will receive a presentation on program evaluation interview findings and next steps, highlights from the FISHstory project, an update on the snowy grouper project and a general program update.

Council Session II, Thursday, June 16, 2022, 3:30 p.m. Until 5 p.m. and Friday, June 17, 2022, 8:30 a.m. Until 12 p.m.

The Council will receive a briefing on any legal issues, if needed, followed by a Council Coordination Committee report. The Council will receive reports from staff, an update on the Large Whale Take Reduction Team meeting and receive input from the SSC and SEP on items not on the meeting agenda. The Council will receive reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center.

The Council will receive Committee reports, review its workplan for the next quarter, upcoming meetings, and take action as necessary. The Council will discuss any other business as needed.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–10594 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Public Meeting of the National Sea Grant Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board), a Federal Advisory Committee. Board members will discuss and provide advice on the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the Sea Grant website. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: *https://www.facadatabase.gov/FACA/FACAPublicPage*

DATES: The announced meeting is scheduled for Wednesday June 8, 2022 from 1:00 p.m.–4:00 p.m. (EDT).

ADDRESSES: The meeting will be held virtually only. For more information and for virtual access see below in the ''Contact Information'' section.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program. Email: *oar.sg-feedback@noaa.gov* Phone Number 301–734–1088. To attend via webinar, please R.S.V.P. to Donna Brown (contact information above) by Tuesday, June 7, 2022.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to public participation with a public comment period on Wednesday, June 8 at 1:05 p.m. (EDT). (Check agenda using the link in the Matters to be Considered section to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Wednesday, June 1, 2022 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date.

Special Accommodations: The Board meeting is virtually accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Wednesday, June 1, 2022.

The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Matters To Be Considered: Board members will discuss and vote on recommendations for competitive research. *https://seagrant.noaa.gov/About/Advisory-Board*

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–10670 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC035]

Endangered and Threatened Species; Take of Abalone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application; two scientific research and enhancement permits.

SUMMARY: Notice is hereby given that NMFS has received permit application requests for two new scientific research and enhancement permits for black abalone. The proposed work is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management, conservation, and recovery efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the application must be received at the provided email address (see **ADDRESSES**) on or before June 17, 2022.

ADDRESSES: All written comments on the applications should be submitted by email to *nmfs.wcr-apps@noaa.gov.* Please include the permit number (26342 or 26606) in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Susan Wang, Long Beach, CA (email: *Susan.Wang@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA Listed Species Covered in This Notice

Endangered black abalone (*Haliotis cracherodii*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and

regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing on the application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 26342

The University of California, Santa Cruz (UCSC), has requested a research and enhancement permit to authorize the rescue and relocation of black abalone in response to emergency events that pose a risk to black abalone and their habitat. Emergency events include oil spills, landslides, debris flows, and vessel groundings. The purpose of the research and enhancement permit is to enhance the survival of endangered black abalone through rescue and relocation. The permit would authorize activities for ten years.

Activities would include collection of black abalone and removal from the wild, captive holding for one day to several months, reintroduction to the wild, and monitoring. Activities would also include long-term holding, spawning, culturing, and experimental outplanting studies. Collected abalone would be photographed, measured, weighed, visually assessed for health and gonad condition, genetically sampled (*e.g.,* a swab and/or an epipodial clipping), and tagged. A proportion of the abalone may be injured or killed due to collection and handling. Severely injured abalone would be held in captivity for rehabilitation. Dead abalone would be preserved and available for analysis at approved labs. Researchers would coordinate closely with NMFS, the California Department of Fish and Wildlife, and other partners on all emergency response activities and follow protocols to minimize stress and harm to rescued black abalone.

Permit 26606

The UCSC has also requested a research and enhancement permit to authorize the collection and transplanting of black abalone. The purpose of this permit is to advance recovery of black abalone by evaluating transplantation as a tool to re-establish populations where they have been locally extirpated and to enhance populations that have experienced declines. The permit would authorize activities for five years.

Activities would include collection of black abalone and removal from the wild, captive holding for one to several days, release at the restoration sites, and monitoring. Collected abalone would be photographed, measured, weighed, visually assessed for health and gonad condition, genetically sampled (*e.g.,* a swab and/or an epipodial clipping), and tagged. A proportion of the abalone may be injured or killed due to collection and handling. Severely injured abalone would be held in captivity for rehabilitation. Dead abalone would be preserved and available for analysis at approved labs. Researchers would coordinate closely with NMFS, the California Department of Fish and Wildlife, and other partners on all collection and transplanting activities and follow protocols to minimize stress and harm to black abalone.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: May 12, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10593 Filed 5–17–22; 8:45 am]

BILLING CODE 3510–22–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–013]

Submission for OMB Review; comments request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by July 18, 2022.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@opic.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Loan Transaction and Qualifying Loan Schedule Reports.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–013.

OMB Form Number: 3015–0011.

Frequency: Semi-annual.

Affected Public: Business or other for-profit.

Total Estimated Number of Annual Number of Respondents: 300.

Estimated Time per Respondent: 4 hours.

Total Estimated Number of Annual Burden Hours: 2,400.

Abstract: Semi-annual reporting by partner financial institutions via the Loan Transaction and Qualifying Loan Schedule Reports will be required to monitor financial compliance with the business terms in loan and bond guarantees administered by the DFC's

Office of Development Credit and to analyze the guarantee portfolio and loans placed under guarantee coverage. The information collected in the reports may also play a role, when coupled with other methods and tools, in evaluating program effectiveness.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2022–10703 Filed 5–17–22; 8:45 am]

BILLING CODE 3210–01–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–001; DFC–002; DFC–003; DFC–004; DFC–005; DFC–006]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing existing information collections for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by July 18, 2022.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Deborah Papadopoulos, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for the referenced information collection(s). Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collections.

Summary Forms Under Review

Title of Collection: Application for Finance. Application for Direct Equity Investment.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–001A, DFC–001B.

OMB Form Number: 3015–0004.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 320.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 480 hours.

Abstract: The Application for Finance will be the principal document used by DFC to determine the proposed transaction's eligibility for debt financing and will collect information for financial underwriting analysis. The Application for Direct Equity Investment will collect information for direct equity applications.

Title of Collection: Request for Registration for Political Risk Insurance.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–002.

OMB Form Number: 3015–0008.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 220.

Estimated Time per Respondent: 30 minutes.

Total Estimated Number of Annual Burden Hours: 110 hours.

Abstract: The Request for Registration for Political Risk Insurance will be the initial document used by DFC to determine the investors' and the project's eligibility for political risk insurance coverage.

Title of Collection: Application for Political Risk Insurance.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–003.

OMB Form Number: 3015–0003.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 220.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 330 hours.

Abstract: The Application for Political Risk Insurance will be the principal document used by DFC to determine the investors' and the project's eligibility for political risk insurance coverage.

Title of Collection: Investment Funds Application.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–004.

OMB Form Number: 3015–0006.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 150.

Estimated Time per Respondent: 1 hours.

Total Estimated Number of Annual Burden Hours: 300 hours.

Abstract: The Investment Funds Application will be the principal document used by the agency to determine the investor's and the project's eligibility for funding and will collect information for underwriting analysis.

Title of Collection: Personal Financial Statement.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–005.

OMB Form Number: 3015–0007.

Frequency: Once per investor per project.

Affected Public: Individuals.

Total Estimated Number of Annual Number of Respondents: 75.

Estimated Time per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 75 hours.

Abstract: The Personal Financial Statement will be used by the agency to determine if individuals who are providing equity investment in or credit support to a proposed transaction have sufficient financial wherewithal to meet their expected obligations under the proposed terms of the agency's financing.

Title of Collection: Personal Identification Form.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–006.

OMB Form Number: 3015–0010.

Frequency: Once per party per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 975.

Estimated Time per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 975 hours.

Abstract: The Personal Identification Form will used by the agency in its Know Your Customer procedures. The agency will perform a robust due diligence review on each party that has a significant relationship to the projects the agency supports, and this collection is one aspect of that review.

Dated: May 13, 2022.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2022–10704 Filed 5–17–22; 8:45 am]

BILLING CODE 3210–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0065]

Agency Information Collection Activities; Comment Request; FERPA and PPRA E-Complaint Forms

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before July 18, 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–0065. 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 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Frank Miller, (202) 453–6631.

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: FERPA and PPRA E-Complaint Forms.

OMB Control Number: 1880–0544.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 500.

Total Estimated Number of Annual Burden Hours: 500.

Abstract: The Student Privacy Policy Office (SPPO) reviews, investigates, and processes complaints of alleged violations of Family Education Rights and Privacy Act (FERPA) and Protection of Pupil Rights Amendment (PPRA) filed by parents and eligible students. SPPO's authority to investigate, review, and process complaints extends to allegations of violations of FERPA by any recipient of United States Department of Education (Department) funds under a program administered by the Secretary (*e.g.,* schools, school districts, postsecondary institutions, state educational agencies, and other third parties that receive Department funds).

Dated: May 13, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–10643 Filed 5–17–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–63–000]

ANR Pipeline Company; Notice of Schedule for the Preparation of an Environmental Assessment for the Proposed Winfield Storage Field Abandonment Project

On March 2, 2022, ANR Pipeline Company (ANR) filed an application in Docket No. CP22–63–000 requesting Authorization pursuant to Section 7(b) of the Natural Gas Act to abandon certain natural gas pipeline facilities in Montcalm County, Michigan. The proposed project is known as the Winfield Storage Field Abandonment Project (Project). According to ANR, due to the Winfield Storage Field's late season performance reliability and a reduction of the storage field's certificated working gas capacity in 2014, the Winfield Storage Field is not relied upon to meet ANR's firm contractual obligations on its system.

On March 16, 2022, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an

environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—September 29, 2022

90-day Federal—Authorization Decision Deadline[2]—December 28, 2022

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

ANR proposes to abandon the Winfield Storage Field by conducting the following activities: Permanently plugging 72 natural gas injection/withdrawal wells; abandoning 15 miles of associated 4-inch, 6-inch, and 10-inch diameter well lines in the storage field; abandoning 4.43 miles of the 16-inch-diameter Winfield Interconnect storage lateral (Lateral 249); abandoning by removal of the Winfield Compressor Station, including all belowground and aboveground structures; and abandoning by removal of all below-ground and aboveground appurtenances in the storage field.

Background

On April 12, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Winfield Storage Field Abandonment Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments regarding potential impacts on private water supply wells, soil erosion and sedimentation control permits, and installation and maintenance of erosion control measures. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, 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.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–63), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: May 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10682 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 40 CFR 1501.10 (2020).

[2] 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7153–018]

Consolidated Hydro New York, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 7153–018.

c. *Date Filed:* April 29, 2022.

d. *Applicant:* Consolidated Hydro New York, LLC (Consolidated Hydro).

e. *Name of Project:* Victory Mills Hydroelectric Project (Victory Mills Project).

f. *Location:* The project is located on Fish Creek in the village of Victory in Saratoga County, New York. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Kevin M. Webb, Licensing Manager, Consolidated Hydro New York, LLC, 670 N Commercial Street, Suite 204, Manchester, NH 03101; Phone at (978) 935–6039 or email at *kwebb@centralriverspower.com;* and Mr. Curtis Mooney, Manager, Regulatory Compliance, Consolidated Hydro New York, LLC, 670 N Commercial Street, Suite 204, Manchester, NH 03101; Phone at (603) 774–0846 or email at *cmooney@centralriverspower.com.*

i. *FERC Contact:* Laurie Bauer at (202) 502–6519, or *laurie.bauer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 28, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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. All filings must clearly identify the project name and docket number on

the first page: Victory Mills Project (P–7153–018).

m. This application is not ready for environmental analysis at this time.

n. The Victory Mills Project includes: (1) A dam that consists of: (a) An approximately 150-foot-long concrete spillway varying in height from 4 to 6 feet with a crest elevation of 187.5 feet National Geodetic Vertical Datum of 1929 (NGVD29), and (b) a sluice gate section approximately 19 feet high and 40 feet long with four gated spillway bays, each with a sill elevation of 181 feet NGVD29 and containing a 7-foot-high by 8-foot-wide wooden timber gate; (2) a 4.3-acre reservoir with a gross storage capacity of approximately 18 acre-feet at the normal surface elevation of 187.5 feet NGVD29; (3) an intake channel feeding a 51-foot-long, 25-foot-high concrete intake structure; (4) an 8-foot-diameter, 300-foot-long steel penstock; (5) a 27-foot by 46-foot concrete powerhouse containing a single Kaplan turbine with an installed capacity of 1,656 kilowatts; (6) an approximately 30-foot-wide by 530-foot-long tailrace channel; (7) a 480-foot-long, 4.8-kilovolt transmission line; and (8) appurtenant facilities.

The Victory Mills Project operates in a run-of-river mode with an average annual generation of 6,073 megawatt-hours between 2011 and 2021.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–7153). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—July 2022
Request Additional Information—July 2022
Issue Acceptance Letter and Notice—October 2022
Issue Scoping Document 1 for comments—November 2022
Request Additional Information (if necessary)—November 2022
Issue Scoping Document 2—February 2023
Issue Notice of Ready for Environmental Analysis—February 2023

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10601 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3472–000]

Aspinook Hydro, LLC; Notice of Authorization for Continued Project Operation

The license for the Wyre Wind Hydroelectric Project No. 3472 was issued for a period ending April 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3472 is issued to Aspinook Hydro, LLC. for a period effective May1, 2022 through April 30, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Aspinook Hydro, LLC. is authorized to continue operation of the Wyre Wynd Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10600 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9985–035]

Rivers Electric, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Application:* Notice of Intent (NOI) to File License Application and Request to Use the Traditional Licensing Process (TLP).

b. *Project No.:* 9985–035.

c. *Date filed:* March 29, 2022.

d. *Submitted by:* Rivers Electric, LLC (Rivers Electric).

e. *Name of Project:* Mill Pond Hydroelectric Project.

f. *Location:* Located on the Catskill Creek in Greene County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Justin Bristol, Asset Development, Clear Energy Hydro, LLC, 18 S Wilcox St., Ste. 100, Castle Rock, CO 80104. Phone: (401) 793–6041, Email: *Justinb@clearenergyhydro.com.*

i. *FERC Contact:* Erin Stockschlaeder, Phone: (202) 502–8107, Email: *erin.stockschlaeder@ferc.gov.*

j. Rivers Electric filed its request to use the TLP on March 29, 2022 and provided public notice of its request on March 30, 2022. In a letter dated May 11, 2022, the Director of the Division of Hydropower Licensing approved Rivers Electric's request to use the TLP.

k. With this notice, we are initiating informal consultation with the U.S. Fish

and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Rivers Electric as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Rivers Electric filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The applicant states its unequivocal intent to submit an application for a subsequent license for Project No. 9985. Pursuant to 18 CFR 16.20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2025.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10603 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–271]

Northwestern Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance of Article 403.

b. *Project No:* 2188–271.

c. *Date Filed:* April 29, 2022.

d. *Applicant:* Northwestern Corporation (licensee).

e. *Name of Project:* Missouri-Madison Hydroelectric Project.

f. *Location:* The project consists of nine hydroelectric developments located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mary Gail Sullivan, Director, Environmental and Lands, Northwestern Corporation, 11 East Park Street, Butte, Montana, 59701, (406) 497–3382, *marygail.sullivan@northwestern.com.*

i. *FERC Contact:* Holly Frank, (202) 502–6833, *Holly.Frank@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 13, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2188–271. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary variance from the minimum flow requirements for the Hebgen and Madison developments, to occur from June 15, 2022 to April 15, 2023, due to the severe drought conditions in the Madison River watershed. Section (3) of Article 403 for the Hebgen Development requires the licensee to limit changes in outflow from Hebgen Dam to no more than 10 percent per day for the entire year. The licensee requests a temporary variance allowing changes in outflow from Hebgen Dam to no more than 5 percent hourly for flow increases; the 10 percent daily limit would remain unchanged for flow decreases. Section (5) of Article 403 for the Madison Development requires ramping rates for flows in the Madison bypass reach, such that flows must not be reduced by more than 100 cfs per hour from 600 cfs to minimum flow (which varies seasonally between 80–200 cfs, as required in Section (4) of Article 403 for the Madison Development), and not increased by more than 100 cfs per hour when flows are 600 cfs or less (except when needed to meet the 1,100-cfs minimum flow below the powerhouse as required in Section (2) of Article 403 for the Madison Development, or to avoid overfilling Ennis Lake). The licensee will maintain the required ramping rate for flow reductions to minimize biological effects, but requests a temporary variance to remove the ramping rate of 100 cfs per hour for flow increases when the bypass flow is less than 600 cfs. The temporary variance would allow the licensee to make larger flow changes more quickly, which contributes to water conservation goals by limiting small increases of Hebgen and Madison dam outflows over longer durations in advance of forecasted needs of increased water downstream. The proposed temporary variance measures, in combination with the temporary minimum flow reductions

completed in April 2022, would reduce the drafting of Hebgen Reservoir and support higher Hebgen Reservoir elevations longer into the recreation season. The duration of the temporary variance, from June 15, 2022 to April 15, 2023, would allow for water savings that ensure water availability through the pulse flow season to protect fishery resources in the lower Madison River and allow for flow changes during the fall/winter period.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10677 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 539–000]

Lock 7 Hydro Partners; Notice of Authorization for Continued Project Operation

The license for the Mother Ann Lee Hydroelectric Project No. 539 was issued for a period ending April 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 539 is issued to Lock 7 Hydro Partners for a period effective May 1, 2022 through April 30, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Lock 7 Hydro Partners is authorized to continue operation of the Mother Ann Lee Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10604 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–92–000]

Venture Global Plaquemines LNG, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Venture Global Plaquemines LNG Uprate Amendment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Venture Global Plaquemines LNG Uprate Amendment Project (Project) involving operation of facilities by Venture Global Plaquemines LNG, LLC (Plaquemines LNG) in Plaquemines Parish, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

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 an authorization. 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 Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. 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 June 10, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 11, 2022, you will need to file those comments in Docket No. CP22–92–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Plaquemine LNG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(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 located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–25–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Plaquemines LNG proposes to increase the Export Terminal's authorized peak liquefaction capacity achievable under optimal conditions from 24.0 million metric tons per annum to 27.2 million metric tons per annum of LNG—or from approximately 1,240 billion cubic feet to approximately 1,405.33 billion cubic feet per year (gas equivalence). According to Plaquemines LNG, this proposed increase in the peak liquefaction capacity reflects refinements in the conditions and assumptions concerning the maximum potential operations. The requested increase does *not* involve the construction of any new facilities nor any modification of the previously authorized facilities.

The general location of the Venture Global Plaquemines LNG Export Terminal is shown in appendix 1.[1]

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the proposed project uprate under the relevant general resource areas:

- Environmental justice;
- air quality; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), which will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then 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 EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the

[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.

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.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] 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.

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 to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

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 CP22–92–000 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).

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. 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: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10599 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8369–049]

Village of Saranac Lake; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Application:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process (TLP).

b. *Project No.:* 8369–049.

c. *Date filed:* March 31, 2022.

d. *Submitted by:* Village of Saranac Lake.

e. *Name of Project:* Lake Flower Dam Hydroelectric Project.

f. *Location:* Located on the Saranac River in the counties of Franklin and Essex, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Erik Stender, Village Manager, Village of Saranac Lake, 39 Main Street, Saranac Lake, NY 12983, Phone: (518) 891–4150, Email: *manager@saranaclakeny.gov.*

i. *FERC Contact:* Claire Rozdilski, Phone: (202) 502–8259, Email: *claire.rozdilski@ferc.gov.*

j. The Village of Saranac Lake filed its request to use the TLP on March 31, 2022, and provided public notice of its request on April 1, 2022.[1] In a letter dated May 11, 2022, the Director of the Division of Hydropower Licensing approved the Village of Saranac Lake's request to use the TLP.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and

[1] The Village of Saranac Lake provided public notice of its request to use the TLP on April 1, 2022, one day later than required under section 5.3 of the Commission's regulations. The notice stated comments would be due 30 days from the March 31, 2022 NOI filing date, which is April 30, 2022. The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2)(2021). Because the deadline to file comments on the request to use the TLP fell on a Saturday, the filing deadline was extended until the close of business on Monday, May 2, 2022, which allowed for a full 30-day comment period from the date of the public notice.

Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Village of Saranac Lake as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The Village of Saranac Lake filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The applicant states its unequivocal intent to submit an application for a subsequent license for Project No. 8369. Pursuant to 18 CFR 16.20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2025.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10608 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1378–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Supplement to March 18, 2022 Golden Spread Electric Cooperative, Inc. tariff filing.

Filed Date: 5/11/22.

Accession Number: 20220511–5098.

Comment Date: 5 p.m. ET 5/25/22.

Docket Numbers: ER22–1418–001.

Applicants: Trailstone Renewables, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 3/23/2022.

Filed Date: 5/12/22.

Accession Number: 20220512–5120.

Comment Date: 5 p.m. ET 6/2/22.

Docket Numbers: ER22–1858–000.

Applicants: Appalachian Power Company.

Description: § 205(d) Rate Filing: RS 300 Removal of KPCO from PCA to be effective 12/31/9998.

Filed Date: 5/11/22.

Accession Number: 20220511–5126.

Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER22–1859–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of IISA, SA No. 6095; Queue No. AE2–224 re: Superseded to be effective 4/7/2022.

Filed Date: 5/11/22.

Accession Number: 20220511–5128.

Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER22–1860–000.

Applicants: Midcontinent Independent System Operator, Inc., Big Rivers Electric Corporation.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–05–12_BREC Attachment O and A to be effective 6/1/2022.

Filed Date: 5/12/22.

Accession Number: 20220512–5105.

Comment Date: 5 p.m. ET 6/2/22.

Docket Numbers: ER22–1861–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Schedule 2 Compliance Filing—Correction of Typographical Error to be effective 10/1/2021.

Filed Date: 5/12/22.

Accession Number: 20220512–5119.

Comment Date: 5 p.m. ET 6/2/22.

Docket Numbers: ER22–1862–000.

Applicants: ISO New England Inc., The Connecticut Light and Power Company.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE/CL&P; Original Service Agreement No. LGIA–ISONE/CLP–22–01 to be effective 4/12/2022.

Filed Date: 5/12/22.

Accession Number: 20220512–5135.

Comment Date: 5 p.m. ET 6/2/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10680 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4451–000]

Green Mountain Power Corporation, City of Somersworth, New Hampshire; Notice of Authorization for Continued Project Operation

The license for the Lower Great Falls Hydroelectric Project No. 4451 was issued for a period ending April 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the

project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 4451 is issued to Green Mountain Power Corporation and the City of Somersworth, New Hampshire for a period effective May 1, 2022 through April 30, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Green Mountain Power Corporation and the City of Somersworth, New Hampshire are authorized to continue operation of the Lower Great Falls Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10605 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2452–235]

Consumers Energy Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Request for temporary variance of Article 401.

b. *Project No.:* 2452–235.

c. *Date Filed:* April 7, 2022.

d. *Applicants:* Consumers Energy Company.

e. *Name of Projects:* Hardy.

f. *Location:* Muskegon River in Newaygo and Mecosta Counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David McIntosh, Consumers Energy, 330 Chestnut Street, Cadillac, MI 49601, (231) 779–5506 *david.mcintosh@cmsenergy.com.*

i. *FERC Contact:* David Rudisail, (202) 502–6376, *david.rudisail@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2452–235. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Request:* Consumers Energy Company proposes to advance the normal winter drawdown of Hardy Reservoir to November 1 rather than January 1 and extend the normal spring refill to May 30 rather than April 30. The modified drawdown and refill requirements will serve as an interim risk reduction measure until the reservoir auxiliary spillway can be modified.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license proposed re-development. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in

the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10602 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–451–000]

Owen Stanley Parker v. Permian Highway Pipeline LLC, et al.; Notice of Complaint

Take notice that on April 22, 2022, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2021), Owen Stanley Parker (Complainant) filed a formal complaint against Permian Highway Pipeline LLC, Kinder Morgan Texas Pipeline LLC, Kinder Morgan Inc., EagleClaw Midstream Ventures LLC, Altus Midstream Energy, and ExxonMobil Permian Highway Pipeline LLC (collectively, Respondents), alleging that Respondents constructed a natural gas pipeline without prior authorization from the Commission, in violation of section 7 of the Natural Gas Act.

The Complainant states that copies of the complaint have been provided to the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Comment Date: 5:00 p.m. Eastern Time on May 31, 2022.

Dated: May 11, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10606 Filed 5–17–22; 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: PR22–38–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: § 284.123 Rate Filing: SOC rates effective April 29 2022 to be effective 4/29/2022.

Filed Date: 5/10/22.

Accession Number: 20220510–5070.

Comments/Protests Due: 5 p.m. ET 5/31/22.

Docket Numbers: PR22–39–000.

Applicants: Cranberry Pipeline Corporation.

Description: § 284.123(g) Rate Filing: Cranberry Pipeline Corporation Revised Statement of Operating Conditions to be effective 5/12/2022.

Filed Date: 5/11/22.

Accession Number: 20220511–5087.

Comment Date: 5 p.m. ET 6/1/22.

284.123(g) Protests Due: 5 p.m. ET 7/11/2022.

Docket Numbers: RP22–921–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: TGP PCG Pooling Service to be effective 7/1/2022.

Filed Date: 5/11/22.

Accession Number: 20220511–5088.

Comment Date: 5 p.m. ET 5/23/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10679 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–463–000]

Texas Eastern Transmission, LP; Notice of Availability of the Environmental Assessment for the Proposed Holbrook Compressor Station Units Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Holbrook Compressor Station Units Replacement Project (Project), proposed by Texas Eastern Transmission LP (Texas Eastern) in the above-referenced docket. Texas Eastern requests authorization to abandon 12 existing reciprocating compressor units dating from the 1950s and replace them with 2 new compressor units at its existing Holbrook Compressor Station (Station), in Greene County, Pennsylvania.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Project would result in some adverse environmental impacts. However, if the Project is constructed and operated in accordance with the mitigation measures discussed in this EA, and our recommendations, approval of the proposed Project would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* for this EA to federal, state, and local government representatives and agencies; elected officials; non-governmental organizations, environmental, and public interest groups; potentially interested Indian tribes; affected landowners; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, (*i.e.,* CP21–463). Be sure you have selected an appropriate date range. 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.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure consideration of your comments, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on June 13, 2022.

For your convenience, there are three methods you can use to file 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 on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–463–000) 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. 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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: May 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10678 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5944–024]

Moretown Hydroelectric, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 5944–024.

c. *Date filed:* November 30, 2020.

d. *Applicant:* Moretown Hydroelectric, LLC.

e. *Name of Project:* Moretown No. 8 Project.

f. *Location:* On the Mad River, immediately downstream from the Town of Moretown, Washington County, Vermont. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Arion Thiboumery, Moretown Hydroelectric, LLC, 1273 Fowler Rd., Plainfield, VT 05667; (415) 260–6890 or email at *arion@ar-ion.net.*

i. *FERC Contact:* Maryam Zavareh at (202) 502–8474, or email at *maryam.zavareh@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://*

www.ferc.gov/docs-filing/efiling.asp. 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. All filings must clearly identify the project name and docket number on the first page: Moretown Hydroelectric Project (P–5944–024).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis.

l. *The project consists of the following existing facilities:* (1) A 333-foot-long, 31-foot-high concrete gravity dam with a 164-foot-long overflow spillway and a crest elevation of 524.7 feet above mean seal level (msl); (2) a 36-acre impoundment with a normal maximum elevation of 524.7 msl; (3) a concrete intake structure with a 12.5-foot-wide, 15.1-foot-high trashrack; (4) a 40-foot-long, 8.5-foot-diameter steel penstock; (5) a 39.4-foot-long, 19.7-foot-wide concrete powerhouse containing a single 1.25-megawatt turbine-generator unit; (6) a tailrace; (7) a 200-foot-long, 12.5-kilovolt transmission line; and (8) appurtenant facilities. The Moretown Project is operated in a run-of-river mode with an average annual generation of 2,094 megawatt-hours.

Moretown hydroelectric LLC proposes to continue the operation the operation of the project in a run-of-river mode.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested individuals an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. At this time, the Commission has suspended access to the Commission's Public Access 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.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments—June 2022

Comments on Scoping Document 1 Due—August 2022

Issue Scoping Document 2 (if necessary)—September 2022

Issue Notice of Ready for Environmental Analysis—October 2022

Dated: May 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10676 Filed 5–17–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1270; FR ID 87271]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 17, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the

section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1270.

Title: Protecting National Security Through FCC Programs.

Form Number: FCC Form 5640.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 3,500 respondents; 10,325 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: Annual, semi-annual and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1603–1604.

Total Annual Burden: 27,475 hours.

Total Annual Cost: $1,125,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the FCC. However, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as a revision after this comment period to obtain the full three year clearance from OMB. Under this information collection, the Communications Act of 1934, as amended, requires the ''preservation and advancement of universal service.'' 47 U.S.C. 254(b). The information collection requirements reported under this collection are the result of the Federal Communications Commission's (the Commission) actions to promote the Act's universal service goals.

On November 22, 2019, the Commission adopted the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Order, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 11423 (2019) (*Report and Order*). The *Report and Order* prohibits future use of Universal Service Fund (USF) monies to purchase, maintain, improve, modify, obtain, or otherwise support any equipment or services produced or provided by a company that poses a national security threat to the integrity of communications networks or the communications supply chain.

On March 12, 2020, the President signed into law the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), Public Law 116–124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. 1601–1609), which among other measures, directs the FCC to establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). This program is intended to provide funding to providers of advanced communications service for the removal, replacement and disposal of certain communications equipment and services that poses an unacceptable national security risk (*i.e.,* covered equipment and services) from their networks. The Commission has designated two entities—Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), along with their affiliates, subsidiaries, and parents—as covered companies posing such a national security threat. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation,* PS Docket No. 19–351, Memorandum Opinion and Order, 35 FCC Rcd 14435 (2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—ZTE Designation,* PS Docket No. 19–352, Memorandum Opinion and Order, DA 20–1399 (PSHSB rel. Nov. 24, 2020).

On December 10, 2020, the Commission adopted the *Second Report and Order* implementing the Secure Networks Act, which contained certain new information collection requirements. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*Second Report and Order*). These requirements will allow the Commission to receive, review and make eligibility determinations and funding decisions on applications to participate in the Reimbursement Program that are filed by certain providers of advanced communications service. These new information collection requirements will also assist the Commission in processing funding disbursement requests and in monitoring and furthering compliance with applicable program requirements to protect against waste, fraud, and abuse.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021 (CAA), appropriating $1.9 billion to ''carry out'' the Reimbursement Program and amending the Reimbursement Program eligibility requirements to expand eligibility to include providers of advanced communications service with 10 million or fewer subscribers and making clear that schools, libraries, and health care providers are eligible to receive Reimbursement Program support to the extent they qualify as providers of advanced communications services. *See* Public Law 116–260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband internet Access Service, §§ 901, 906, 134 Stat. 1182 (2020). The Commission has interpreted the term ''provider of advanced communications service'' to mean ''facilities-based providers, whether fixed or mobile, with a broadband connection to end users with at least 200 kbps in one direction.'' *Second Report and Order,* 35 FCC Rcd at 14332, para. 111. Participation in the Reimbursement Program is voluntary but compliance with the new information collection requirements is required to obtain Reimbursement Program support. The Commission

adopted a *Third Report and Order* on July 13, 2021, implementing the amendments to the Secure Networks Act by the CAA for the Reimbursement Program. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Third Report and Order, FCC 21–86 (rel. July 14, 2021) (*Third Report and Order*).

Separate from the Reimbursement Program, the Secure Networks Act requires all providers of advanced communications service to annually report, with exception, on whether they have purchased, rented, leased or otherwise obtained covered communications equipment or service on or after certain dates. 47 U.S.C. 1603(d)(2)(B). The *Second Report and Order* adopted a new information collection requirement to implement this statutory mandate. *See* Secure Networks Act § 5. If the provider certifies it does not have any covered equipment and services, then the provider is not required to subsequently file an annual report, unless it later obtains covered equipment and services. *Second Report and Order,* 35 FCC Rcd at 14370, at para. 215.

The Commission therefore propose to revise this information collection, as well as Form 5460, to reflect this new requirement contained in the *Public Notice* released by the Bureau on August 3, 2021. This Public Notice, among other things, requires providers participating in the Reimbursement Program to notify the Commission of ownership changes using the FCC Form 5640 to ensure the accuracy of information on file for program participants when there is a change in ownership.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–10672 Filed 5–17–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010979–068.

Agreement Name: Caribbean Shipowners Association.

Parties: Crowley Caribbean Services LLC; Hybur Ltd.; King Ocean Services Limited, Inc.; Seaboard Marine Ltd.; Seacor Island Lines, LLC; and Tropical Shipping & Contruction Co., Ltd.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment adds Seacor Island Lines LLC as a party to the Agreement.

Proposed Effective Date: 6/23/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1194.

Agreement No.: 201265–002.

Agreement Name: Crowley/Seaboard Costa Rica & Panama Space Charter Agreement.

Parties: Crowley Latin America Services, LLC and Seaboard Marine Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises Article 7 to extend the minimum duration of the Agreement.

Proposed Effective Date: 6/25/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/15263.

Agreement No.: 201386.

Agreement Name: Hapag-Lloyd/Zim TEX Space Charter Agreement.

Parties: Hapag-Lloyd AG and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Hapag-Lloyd to charter space to Zim in the trade between ports in Turkey and Morocco on the one hand and ports on the Atlantic Coast of the United States on the other hand.

Proposed Effective Date: 5/11/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/63505.

Agreement No.: 201269–001.

Agreement Name: Seaboard/Crowley Miami & Kingston Space Charter Agreement.

Parties: Crowley Caribbean Services LLC and Seaboard Marine Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises Article 7 to extend the minimum duration of the Agreement.

Proposed Effective Date: 6/25/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/15289.

Agreement No.: 012276–002.

Agreement Name: Hapag-Lloyd/Zim Mediterranean Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises the Agreement by deleting Colombia, the Dominican Republic, and Jamaica from the geographic scope; revising Article 5.1 to change the amount of space being exchanged and the strings on which it is exchanged; deleting certain ports from Article 5.2; and extending the minimum duration in Article 7.2.

Proposed Effective Date: 6/25/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/135.

Agreement No.: 201385.

Agreement Name: ONE/ELJSA Slot Exchange Agreement.

Parties: Ocean Network Express Pte. Ltd. and Evergreen Line Joint Service Agreement.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to exchange space on their HTW and FP1 services in the trade between ports in Japan, Taiwan and The People's Republic of China on the one hand, and U.S. ports in the Pacific coast range on the other hand. *Republishing to reflect parties' request for expedited review.*

Proposed Effective Date: 6/13/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/62502.

Dated: May 13, 2022.

William Cody,

Secretary.

[FR Doc. 2022–10690 Filed 5–17–22; 8:45 am]

BILLING CODE 6730–02–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 June 2, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The David C. Neuhaus Bank Stock Revocable Trust, Fairfax, Iowa; Laurie Neuhaus, as trustee, Amana, Iowa; Patrick Slater, Lois E. Slater, John C. Slater, John E. Neuhaus and Carla A. Neuhaus, all of Cedar Rapids, Iowa; the John D. Lefebure 2010 Revocable Trust, John D. Lefebure, as trustee, both of Fairfax, Iowa; James Neuhaus, Amana, Iowa; and David J. Slater, Lakewood, Colorado;* to become members of the Neuhaus Family Control Group, a group acting in concert, to retain voting shares of Vanderbilt Holding Company, Inc., and thereby indirectly retain voting shares of Fairfax State Savings Bank, both of Fairfax, Iowa. Additionally, Patrick Slater to acquire additional voting shares of Vanderbilt Holding Company, Inc., and thereby indirectly acquire voting shares of Fairfax State Savings Bank.

Board of Governors of the Federal Reserve System.

Margaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–10710 Filed 5–17–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Pharmacotherapy for Adults With Alcohol-Use Disorders in Outpatient Settings: Systematic Review Update

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Pharmacotherapy for Adults with Alcohol-Use Disorders in Outpatient Settings: Systematic Review Update,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before June 17, 2022.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Pharmacotherapy for Adults with Alcohol-Use Disorders in Outpatient Settings: Systematic Review Update.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on Pharmacotherapy for Adults with Alcohol-Use Disorders in Outpatient Settings: Systematic Review Update, including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/alcohol-misuse-drug-therapy/protocol.*

This is to notify the public that the EPC Program would find the following information on Pharmacotherapy for Adults with Alcohol-Use Disorders in Outpatient Settings: Systematic Review Update helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and

available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the questions below. This information is provided as background and AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1a: Which medications are efficacious for improving consumption outcomes for adults with alcohol-use disorders in outpatient settings?

KQ 1b: How do medications for adults with alcohol-use disorders compare for improving consumption outcomes in outpatient settings?

KQ 2a: Which medications are efficacious for improving health outcomes (including functioning and quality-of-life outcomes) for adults with alcohol-use disorders in outpatient settings?

KQ 2b: How do medications for adults with alcohol-use disorders compare for improving health outcomes (including functioning and quality-of-life outcomes) in outpatient settings?

KQ 3a: What adverse effects are associated with medications for adults with alcohol-use disorders in outpatient settings?

KQ 3b: How do medications for adults with alcohol-use disorders compare for adverse effects in outpatient settings?

KQ 4: Are medications for treating adults with alcohol-use disorders effective in primary care settings?

KQ 5: Are any of the medications more or less effective than other medications for older adults, younger adults, smokers, or those with co-occurring disorders?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)

- *Population(s)*
  - Adults (age 18 years or older) with alcohol-use disorders.
- *Interventions*
  - Pharmacotherapy for relapse prevention. This includes:
    - Medications approved by FDA for treating alcohol dependence:
      - Acamprosate
      - disulfiram
      - naltrexone (oral or injectable)
    - Certain medications in use off label that are available in the United States:
      - Baclofen
      - gabapentin
      - ondansetron
      - topiramate
      - prazosin
      - varenicline
  - Studies evaluating pharmacotherapy that used co-interventions with other treatments for AUDs (*e.g.,* behavioral counseling, cognitive behavioral therapy, motivational enhancement therapy, psychosocial treatments, or self-help such as 12-step programs [*e.g.,* Alcoholics Anonymous]) will be eligible for inclusion, as long as they meet other inclusion/exclusion criteria.
  - This review will not include pharmacotherapy for alcohol withdrawal.
- *Comparators*
  - Studies must compare one of the medications listed above with placebo or another eligible medication.
- *Outcomes*
  - Consumption outcomes:
    - Abstinence/any drinking
      - —rates of continuous abstinence
      - —percentage of days abstinent
      - —time to first drink/lapse
      - —time to heavy drinking/relapse
    - reduction in alcohol consumption
      - —number of heavy drinking days
      - —percentage of subjects with no heavy drinking days
      - —number of drinking days
      - —drinks per drinking day
      - —drinks per week
  - Health outcomes:
    - Accidents
    - injuries
    - quality of life
    - function
    - mortality
  - Adverse effects of intervention(s):
    - Withdrawals due to adverse events
    - nausea/vomiting
    - diarrhea
    - anorexia
    - alpitations
    - headache
    - dizziness
    - cognitive dysfunction
    - taste abnormalities
    - paresthesias (numbness, tingling)
    - metabolic acidosis
    - glaucoma
    - vision changes
    - suicidal ideation
    - insomnia
    - anxiety
    - rash
    - tiredness
    - weakness
    - constipation
- *Timing*
  - Studies with at least 12 weeks of planned pharmacologic treatment and followup from the time of medication initiation.
- *Setting*
  - Outpatient healthcare settings; KQ 4 applies to primary care settings only (*i.e.,* internal medicine, family medicine, obstetrics/gynecology, or college and university health clinics).

Dated: May 12, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–10614 Filed 5–17–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Plan for Foster Care and Adoption Assistance—Title IV–E (OMB #0970–0433)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a 3-year extension of the Plan for Foster Care and Adoption Assistance—Title IV–E, (OMB#: 0970–0433, expiration 11/30/2022). This plan also incorporates the plan requirements for the optional Guardianship Assistance program, the Title IV–E Prevention Services plan and the Title IV–E Kinship Navigator program. There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed

requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: A title IV–E plan is required by section 471, part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting federal funding for foster care, adoption assistance, and guardianship assistance under the Act. Section 479B of the Act provides for an Indian tribe, tribal organization, or tribal consortium (tribe) to operate a title IV–E program in the same manner as a state with minimal exceptions. The tribe must have an approved Title IV–E Plan. The Title IV–E Plan provides assurances the programs will be administered in conformity with the specific requirements stipulated in Title IV–E. The plan must include all applicable state or tribal statutory, regulatory, or policy references and citations for each requirement as well as supporting documentation. A title IV–E agency may use the pre-print format prepared by CB, or a different format, on the condition that the format used includes all of the Title IV–E Plan requirements.

Title IV–E of the Act was amended by Public Law 115–123, which included the Family First Prevention Services Act (FFPSA). FFPSA authorized new optional Title IV–E funding for time-limited (1 year) prevention services for mental health/substance abuse and in-home parent skill-based programs for (1) a child who is a candidate for foster care (as defined in section 475(13) of the Act), (2) pregnant/parenting foster youth, and (3) the parents/kin caregivers of those children and youth (sections 471(e), 474(a)(6), and 475(13) of the Act). Title IV–E prevention services must be rated as promising, supported, or well supported in accordance with HHS criteria and be approved by HHS (section 471(e)(4)(C) of the Act) as part of the Title IV–E Prevention Services Clearinghouse (section 476(d)(2) of the Act). A state or tribal Title IV–E agency electing to participate in the program must submit a 5-year Title IV–E Prevention Program Plan that meets the statutory requirements. (See Program Instructions ACYF–CB–PI–18–09 and ACYF–CB–PI–18–10 for more information.)

FFPSA also amended section 474(a)(7) of the Act to reimburse state and tribal Title IV–E agencies for a portion of the costs of operating kinship navigator programs that meet certain criteria. To qualify for funding under the Title IV–E Kinship Navigator Program, the program must meet the requirements of a kinship navigator program described in section 427(a)(1) of the Act. The Kinship Navigator Program must meet practice criteria of promising, supported, or well-supported in accordance with HHS criteria and be approved by HHS (section 471(e)(4)(C) of the Act). To begin participation in the Title IV–E Kinship Navigator Program, a Title IV–E agency must submit an attachment to its Title IV–E plan that specifies the kinship navigator model it has chosen to implement and the date on which the provision of program services began or will begin, and provide an assurance that the model meets the requirements of section 427(a)(1) of the Act, as well as a brief narrative describing how the program will be operated. (Please see Program Instruction ACYF–CB–PI–18–11 for additional information: *https://www.acf.hhs.gov/cb/policy-guidance/pi-18-11.*)

Respondents: State and tribal title IV–E agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Title IV–E Plan	17	1	16	272
Title IV–E prevention services plan	12	1	5	60
Attachment to Title IV–E plan for Kinship Navigator Program	15	1	1	15

Estimated Total Annual Burden Hours: 347.

Authority: Title IV–E of the Social Security Act as amended by Public Law 115– 123 enacted February 9, 2018.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–10652 Filed 5–17–22; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0001]

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Science Board to the Food and Drug Administration. The Science Board provides advice to the Commissioner of Food and Drugs and other appropriate officials on specific, complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments, including in regulatory science, input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs. The meeting will be open to the public.

DATES: The meeting will be held virtually on June 14, 2022, from 9 a.m. to 4 p.m. Eastern Time.

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. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993, 301–796–4769, *Rakesh.Raghuwanshi@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 Agency'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:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The Science Board to the Food and Drug Administration will consider challenges in evaluating the safety of dietary supplement and food ingredients with predicted pharmacological activity, utilizing cannabinoids as a case study. The Science Board to the Food and Drug Administration will also hear about the Agency's enhanced efforts to spur the development, qualification, and adoption of new alternative methods for regulatory use that can replace, reduce, and refine animal testing and have the potential to provide both more timely and more predictive information to accelerate product development and enhance emergency preparedness. The Science Board to the Food and Drug Administration will also hear about the Agency's enhanced efforts to ensure optimal organization, infrastructure, and expertise for data science efforts in alignment with its regulatory scope and evidence-based decision making, in support of FDA's public health priorities.

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 on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be 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: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 7, 2022. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 p.m. 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 addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 1, 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 June 7, 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 Rakesh Raghuwanshi (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: May 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10697 Filed 5–17–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0401]

Safety Considerations for Container Labels and Carton Labeling Design To Minimize Medication Errors; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Safety Considerations for Container Labels and Carton Labeling Design to Minimize Medication Errors.'' The guidance focuses on safety aspects of the container label and carton labeling design for human prescription drug and biological products. The guidance provides sponsors of new drug applications (NDAs), biologics license applications (BLAs), abbreviated new drug applications (ANDAs), and prescription drugs marketed without an approved NDA or ANDA with a set of principles and recommendations for ensuring that critical elements of product container labels and carton labeling are designed to promote safe dispensing, administration, and use of the product. This guidance finalizes the draft guidance of the same title issued on April 24, 2013.

DATES: The announcement of the guidance is published in the **Federal Register** on May 18, 2022.

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

Electronic Submissions

Submit electronic comments in the following way:

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

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–D–0401 for ''Safety Considerations for Container Labels and Carton Labeling Design to Minimize Medication Errors.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Irene Z. Chan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4420, Silver Spring, MD 20993–0002, 301–796–3962; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Safety Considerations for Container Labels and Carton Labeling Design To Minimize Medication Errors.'' In Title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85), Congress reauthorized and expanded the Prescription Drug User Fee Act (PDUFA) program for fiscal years 2008 through 2012. As part of the performance goals and procedures set forth in an enclosure to the letter from the Secretary of Health and Human Services referred to in section 101(c) of FDAAA, FDA committed to certain performance goals and procedures. (See *https://wayback.archive-it.org/7993/20171115015358/https://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm*). In that letter, FDA stated that it would use fees collected under PDUFA to implement various measures to reduce medication errors related to look-alike and sound-alike proprietary names, unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs. Among these measures, FDA agreed that, after public consultation with academia, industry, other stakeholders, and the general public, the Agency would publish a draft guidance describing practices for naming, labeling, and packaging drugs and biologics to reduce medication errors. On June 24 and 25, 2010, FDA held a public workshop and opened a public docket (Docket No. FDA–2010–N–0168) to receive comments on these measures. After reviewing public input, a draft guidance was subsequently published by FDA in April 2013 (Docket No. FDA–2013–D–0401). Additional public comment was provided through a docket. This guidance presents FDA's final recommendations and conclusions after having reviewed this public input and considered information learned through evaluating postmarketing medication errors.

This guidance is intended to help entities holding NDAs, BLAs, and ANDAs and entities manufacturing or distributing prescription drugs marketed without an approved application. This guidance focuses on safety aspects of the application holder's container label and carton labeling design, and it provides a set of principles and recommendations for ensuring that critical elements of a product's container label and carton labeling are designed to promote safe dispensing, administration, and use of the product.

The recommendations in this guidance are intended to provide best practices on how to improve the container label and carton labeling of prescription drug and biological products to minimize medication errors. The guidance also provides examples of container label and carton labeling designs that resulted in postmarketing medication errors.

This guidance finalizes the draft guidance entitled ''Safety Considerations for Container Labels and Carton Labeling Design to Minimize Medication Errors'' published in the **Federal Register** of April 24, 2013 (78 FR 24211). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include revisions to clarify language that some commenters considered unnecessarily restrictive and emphasize that labeling statements should be considered within a risk framework. In addition, the guidance has been updated to reflect regulations and policy that have been established since the draft guidance was

published. Furthermore, editorial changes were made to improve clarity.

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

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 203 described in the final rule entitled ''Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Policies'' have been approved under OMB control number 0910–0435. The collections of information in part 201 (21 CFR part 201) described in the final rule entitled ''Bar Code Label Requirement for Human Drug Products and Biological Products'' have been approved under OMB control number 0910–0537. The collections of information for prescription drug product labeling in § 201.56 and 201.57 (21 CFR 201.56 and 201.57) have been approved under OMB control number 0910–0572. The collections of information described in the FDA guidance for industry entitled ''Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification'' have been approved under OMB control number 0910–0806.

In addition, the inclusion of warning statements on labels for certain drug products would be exempt from review by OMB under the PRA because the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of ''collection of information'' (see 5 CFR 1320.3(c)(2)).

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, or https://www.regulations.gov*.

Dated: May 12, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10699 Filed 5–17–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0880]

Assessing User Fees Under the Generic Drug User Fee Amendments of 2017; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017.'' This guidance provides stakeholders information regarding the implementation of the Generic Drug User Fee Amendments of 2017 (GDUFA II) and policies and procedures surrounding its application. This guidance is finalizing FDA's draft guidance for industry ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017,'' published in November 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on May 18, 2022.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2012–D–0880 for ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Keith F. Verrett Jr., Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Rm. 2179, Silver Spring, MD 20993–0002, 301–796–7900, *CDERCollections@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017.'' GDUFA II (Pub. L. 115–52, Title III), was signed into law on August 18, 2017. GDUFA II extends FDA's authority to assess and collect generic drug user fees from fiscal year (FY) 2018 through FY 2022. The extension of this user fee authority under GDUFA II continues FDA's and industry's ability to meet the goals of improving public access to safe and effective generic drugs and enhancing the predictability of the review process.

The guidance announced in this notice replaces the draft guidance for industry on ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017,'' dated October 2019 and published in November 2019. This guidance addresses changes in user fee assessments from GDUFA I, user fees incurred by industry under GDUFA II, payment procedures, reconsideration and appeals, and other additional information to assist industry in complying with GDUFA II. This guidance also describes how FDA determines affiliation for purposes of assessing generic drug user fees.

FDA has reviewed the comments submitted to the docket and determined that the comments do not require substantive changes from the draft guidance. Clarifying language was, however, added to this final guidance largely based on the public comments and to update the Agency's treatment of sponsor requests for ''transfer'' of certain user fee payments eligible for refund toward applicable user fee liabilities.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Assessing User Fees Under the Generic Drug User Fee Amendments of 2017.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in Form FDA 3913 (User Fee Payment Refund Request) have been approved under OMB control number 0910–0805 and the collections of information in Form FDA 3914 (User Fee Payment Transfer Request) have been approved under OMB control number 0910–0805.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: May 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10702 Filed 5–17–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–xxxx]

Agency Father Generic Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before July 18, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: National Strategy for a Resilient Public Health Supply Chain Paper Reduction Act Clearance.

Type of Collection: Father Generic ICR.

OMB No. 0990–XXXX—Assistant Secretary for Preparedness and

Response—Office of Strategy, Policy, Planning, and Requirements.

Abstract

The Department of Health and Human Services, HHS, Assistant Secretary for Preparedness and Response, within Office of Strategy, Policy, Planning, and Requirements is seeking approval by OMB on a new Generic clearance. HHS, is working with the White House and across the federal interagency to launch a multiyear implementation involving the identification and coordination of measurable activities across the U.S. government, SLTT (State, Local, Tribal, and Territorial) jurisdictions, and private sector partners. Cross-sectoral engagement is the underpinning of many of the interdependent implementation activities. For example, one such activity involves information collection from SLTT partners on facility, local, and state stockpiling plans to ensure coordinated plans are in place for a future public health emergency. Potential engagements include surveys, stakeholder meetings, RFI's, town hall meetings, and workshops. With each of these different mechanisms of engagement, there is a varied frequency ranging from single engagements to regularly recurring meetings.

In July 2021, the White House published the National Strategy for a Resilient Public Health Supply Chain. The strategy calls out strategic goals and recommendations for building immediate and long-term resilience through increased visibility, agility, and robustness in the public health supply chain to prepare for and mitigate future public health emergencies.

HHS is requesting a 3-year PRA clearance and will engage with SLTT, trade groups, mixed cross-sector audiences, non-governmental organizations, manufacturers, academia, healthcare providers and facilities, and local communities.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Stakeholder Meetings	Private Sector, Manufacturers, U.S. Government Supply Chain Inventory Holders.	30	6	6	1080
RFIs	Private Sector, Mixed Cross-Sector Audience, Manufacturers, SLTT partners.	40	1	40	1600
Workshops	Private Sector, SLTT partners, Trade Groups, Manufacturers, Academia, Healthcare Providers/ Facilities, Public.	50	4	8	1600
Surveys	Private Sector, SLTT partners, Trade Groups, Manufacturers, Academia.	75	1	1	75
Total			12		4355

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–10700 Filed 5–17–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Study Section.

Date: June 13, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Study Section.

Date: June 17, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Helen Huang, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892, (301) 435–8207, *Helen.Huang@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; NIH Pathway to Independence Award (Parent K99/R00 Independent Clinical Trial Not Allowed)/ Member Conflict.

Date: June 24, 2022.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2127D, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Rm. 2127D, Bethesda, MD 20892, (301) 827–8231, *luis_dettin@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Home and Community-Based Physical Activity Interventions to Improve the Health of Wheelchair Users (R01 Clinical Trial Required).

Date: July 1, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of and Human Development, NIH, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; NCMRR Early Career Research Award.

Date: July 7–8, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Helen Huang, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver, National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892, 301–435–8380, *helen.huang@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10637 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics Study Section.

Date: June 8–9, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Altaf Ahmad Dar, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892 (301) 827–2680, *altaf.dar@,nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: June 15–16, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154 *dianne.hardy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness (Collaborative R01).

Date: June 16–17, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shivakumar V Chittari, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Data Management and Analysis Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shivakumar V Chittari, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, *chittari.shivakumar@nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *ingrahamrh@mail.nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Emerging Imaging Technologies in Neuroscience Study Section.

Date: June 16–17, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: June 16–17, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review National Institute of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, *chana2@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Human Studies of Diabetes and Obesity Study Section.

Date: June 16–17, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, (301) 435–1044, *chenhui@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics—2 Study Section.
Date: June 21–22, 2022.
Time: 9:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Healthcare and Health Disparities Study Section.
Date: June 21–22, 2022.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Tara Roshell Earl, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007C, Bethesda, MD 20892, (301) 402–6857, *earltr@mail.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.
Date: June 21–22, 2022.
Time: 9:30 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, (301) 435–1787, *srikanth.ranganathan@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.
Date: June 21–22, 2022.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sharon Isern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 810J, Bethesda, MD 20892, (301) 435–0000, *iserns2@mail.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Nutrition and Metabolism in Health and Disease Study Section.
Date: June 21–22, 2022.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 755–4335, *greg.shelness@nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cell Signaling and Molecular Endocrinology Study Section.
Date: June 21–22, 2022.
Time: 10:00 a.m. to 8:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, *malaiyandilm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 12, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10691 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; NIH–DoD–VA Pain Management Collaboratory Demonstration Projects (UG3/UH3).
Date: June 17, 2022.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate cooperative agreement applications.
Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sonia Elena Nanescu, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, *sonia.nanescu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 12, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10627 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: ViCTER Award R01 Grant Applications.
Date: June 15–16, 2022.
Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, 530 Davis Dr., Keystone Bldg., Room 3094, Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Maintaining and Enriching Environmental Epidemiology Cohorts to Support Scientific and Workforce Diversity.

Date: June 23, 2022.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 984–287–3236, *bass@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Summer Research and Educational Experience.

Date: June 27, 2022.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 984–287–3236, *bass@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10636 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL HEART, LUNG, AND BLOOD INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: June 6, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate to review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Robert S. Balaban, Ph.D., Scientific Director, Division of Intramural Research, National Institutes of Health, NHLBI Building 10, CRC, 4th Floor, Room 1581, 10 Center Drive, Bethesda, MD 20892, (301) 496–2116.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/board-scientific-counselors,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10638 Filed 5–17–22; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 6, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 8D49, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Pamela Gilden, Branch Chief, Science Planning and Operations Branch, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 8D49, Rockville, MD 20852–9831, 301–594–9954, *pamela.gilden@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: May 13, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10663 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance Application Review.

Date: June 8, 2022.

Time: 11:00 a.m. to 4:00 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: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov*.

Name of Committee: Communication Disorders Review Committee.

Date: June 16–17, 2022.

Time: 10:30 a.m. to 4:30 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: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Chemical Senses Fellowship Review.

Date: June 21, 2022.

Time: 2:00 p.m. to 4:00 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: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Voice, Speech and Language Fellowship Review.

Date: June 27, 2022.

Time: 1:00 p.m. to 5:00 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: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Review of NIDCD R25 Applications.

Date: July 6, 2022.

Time: 3:00 p.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: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD, National Human Ear Resource Network Review.

Date: July 14, 2022.

Time: 1:00 p.m. to 5:00 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: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 12, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10622 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be held as a virtual meeting on June 17, 2022, and is open to the public as indicated below. The open session (event) will be videocast by NIH with closed captioning at: *https://videocast.nih.gov/watch=45255.* To request reasonable accommodations, please contact *Nathan.Brown2@nih.gov* at least five days before the event. The agenda can be found at: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec/national-advisory-eye-council-naec-meeting-agenda.*

A portion of this 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 Advisory Eye Council.

Date: June 17, 2022.

Open: 10:00 a.m. to 2:00 p.m.

Agenda: Presentation of the NEI Director's report, discussion of NEI programs, and concept clearances.

Place: National Eye Institute, 6700 Rockledge Drive, 3400, Bethesda, MD 20892 (Virtual Meeting).

Closed: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Drive, 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathleen C. Anderson, Ph.D., Director, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3440, Bethesda, MD 20892, (301) 451–2020, *kanders1@nei.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed above before the meeting or within 15 days after the meeting. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 4, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10621 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required) and NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44 Clinical Trial Required).

Date: June 16, 2022.

Time: 10:00 a.m. to 5:00 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 3G76, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy & Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G76, Bethesda, MD 20892, (240) 627–3255, *marci.scidmore@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: May 13, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10667 Filed 5–17–22; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meeting will be open to the public. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 6, 2022.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: Report of Institute Director.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Closed: 11:45 a.m. to 12:00 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 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Matthew J. Fenton, Ph.D., Director Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Acquired Immune Deficiency Syndrome Subcommittee.

Date: June 6, 2022.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291 *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: June 6, 2022.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of Division Director and Division staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Immunology and Transplantation Subcommittee.

Date: June 6, 2022.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.niaid.nih.gov/about/advisory-council* where an agenda and any additional information for the meeting will be posted when available.

(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: May 13, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10665 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Conflicting F and K Grant Applications of National Institute of Nursing Research.

Date: June 13, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Boulevard, Bethesda, MD 22150 (Virtual Meeting).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: June 23–24, 2022.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Boulevard, Bethesda, MD 22150 (Virtual Meeting).

Contact Person: Ming Yan, MD, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 703G, Bethesda 20892, (301) 435–1776, *yanming@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 12, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10626 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required) and NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44 Clinical Trial Required).

Date: June 14, 2022.

Time: 10:00 a.m. to 5:00 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 3G76, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy & Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G76, Bethesda, MD 20892, (240) 627–3255, *marci.scidmore@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: May 13, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10666 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: June 14, 2022.

Time: 12:00 p.m. to 4:00 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 3G58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20852, 301–761–6911, *anuja.mathew@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: May 13, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10664 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

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 Advisory Council for Complementary and Integrative Health.

Date: August 12, 2022.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy 2, 6707 Democracy Boulevard, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892–5475, 301–594–3462, *khalsap@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 12, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10625 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel.

Date: June 16, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Suite 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alumit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Suite 1037, Bethesda, MD 20892, (301) 496–9539, *alumit.ishai@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 13, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10689 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST–2 Overflow.

Date: June 10, 2022.

Time: 9:00 a.m. to 11:00 a.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: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; P01 Review.

Date: June 10, 2022.

Time: 10:00 a.m. to 1:00 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: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301–451–2854, *li.jia@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders C Study Section Translational Neural Brain, and Pain Relief Devices (NSD–C).

Date: June 13–14, 2022.

Time: 10:00 a.m. to 1:00 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: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, 6001 Executive Boulevard, Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; SEP—Translational Neural, Brain and Pain Relief Devices.

Date: June 14, 2022.

Time: 1:00 p.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: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, 6001 Executive Boulevard, Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223 *Ana.Olariu@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A Study Section.

Date: June 16–17, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Suite 3208, MSC 9529, Rockville, MD 20852, 301–402–0288, *natalia.strunnikova@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10650 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Trials SEP (UG3, U24, R61, R34).

Date: June 29, 2022.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10635 Filed 5–17–22; 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: Allergy, Immunology, and Transplantation Research Committee Allergy, Immunology, and Transplantation Research Committee (AITC).

Date: June 9–10, 2022.

Time: 9:00 a.m. to 5:00 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 3G31B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31B, Rockville, MD 20892–9834d, (240) 669–5060, *james.snyder@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: May 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10651 Filed 5–17–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0097]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0038

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0038, Plan Approval and Records for Tank Vessels, Passenger Vessels, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels and Oceanographic Research Vessels; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before June 17, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0097]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0097], and must be received by June 17, 2022.

Submitting Comments

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,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are 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.

We accept anonymous comments. All comments to the Coast Guard 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0038.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 9077, February 17, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Plan Approval and Records for Tank Vessels, Passenger Vessels, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels and Oceanographic Research Vessels—46 CFR subchapters D, H, I, I–A, R and U.

OMB Control Number: 1625–0038.

Summary: This collection requires the shipyard, designer or manufacturer for the construction of a vessel to submit plans, technical information and operating manuals to the Coast Guard.

Need: Under 46 U.S. Code 3301 and 3306, the Coast Guard is responsible for enforcing regulations promoting the safety of life and property in marine transportation.

The Coast Guard uses this information to ensure that a vessel meets the applicable standards for construction, arrangement and equipment under 46 CFR Subchapters D, H, I, I–A, R and U.

Forms: None.

Respondents: Shipyards, designers, and manufacturers of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 3,673 hours to 3,801 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: May 13, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–10705 Filed 5–17–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0101]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0016

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0016, Welding and Hot Work Permits; Posting of Warning Signs; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before June 17, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0101]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0101], and must be received by June 17, 2022.

Submitting Comments

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,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are 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.

We accept anonymous comments. All comments to the Coast Guard 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0016.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 7849, February 10, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Welding and Hot Work Permits; Posting of Warning Signs.

OMB Control Number: 1625–0016.

Summary: This information collection helps to ensure that waterfront facilities and vessels are in compliance with safety standards. A permit must be issued prior to welding or hot work at certain waterfront facilities; and, the posting of warning signs is required on certain facilities. The statutory authority is 46 U.S.C. 70034 (formerly 33 U.S.C. 1231) and chapter 701 of Title 46.

Need: The information is needed to ensure safe operations on certain waterfront facilities and vessels.

Forms: CG–4201, Welding and Hot Work.

Respondents: Owners and operators of certain waterfront facilities and vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 435 hours to 497 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: May 13, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–10707 Filed 5–17–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0098]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0009

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0009, Oil Record Book for Ships; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before June 17, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0098]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://*

www.regulations.gov. Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0098], and must be received by June 17, 2022.

Submitting Comments

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,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are 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.

We accept anonymous comments. All comments to the Coast Guard 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0009.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 9078, February 17, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Oil Record Book for Ships.

OMB Control Number: 1625–0009.

Summary: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), requires that information about oil cargo or fuel operations be entered into an Oil Record Book (CG–4602A). The requirement is contained in 33 CFR 151.25.

Need: This information is used to verify sightings of actual violations of the APPS to determine the level of compliance with MARPOL 73/78 and as a means of reinforcing the discharge provisions.

Forms: CG–4602A, Oil Record Books for Ships.

Respondents: Operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 15,741 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: May 5, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–10634 Filed 5–17–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0254]

National Chemical Transportation Safety Advisory Committee; June 2022 Meetings

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The National Chemical Transportation Safety Advisory Committee (Committee) will meet to discuss matters relating to the safe and secure marine transportation of hazardous materials. The meetings will be open to the public via both a virtual platform and limited in-person seating on a first come first served basis.

DATES:

Meetings: The National Chemical Transportation Safety Advisory Committee subcommittee will meet on Wednesday, June 8, 2022, from 9 a.m. to 5 p.m. The full Committee will meet on Thursday, June 9, 2022, from 9 a.m. until 5 p.m. (Eastern Daylight Time). Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meeting, submit your written comments no later than May 25, 2022.

ADDRESSES: The meeting will be held at 1525 Wilson Boulevard, Arlington, VA 22209.

Pre-registration Information: Pre-registration is required for in-person access to the meeting and for any attending by videoconference. In-person attendance to the meeting will be limited to the first 33 registrants, with priority for members of the Committee, subcommittees, and Coast Guard support staff. If you are not a member of the Committee, subcommittees, or a member of the Coast Guard involved with NCTSAC, you must request in-person attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response noting if you are able to attend in-person or if the in-person roster is full.

Attendees at the meeting will be required to follow COVID–19 safety guidelines promulgated by Centers for Disease Control and Prevention (CDC), which may include the need to wear masks. CDC guidance on COVID protocols can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but, if you want Committee members to review your comment before the meeting, please submit your comments no later than May 25, 2022. The Committee is particularly interested in comments related to the issues in the ''Agenda'' section below. The Committee encourages 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 individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2022–0254]. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security notice available on homepage of *https://regulations.gov* and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

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

FOR FURTHER INFORMATION CONTACT: Lieutenant Ethan T. Beard, Alternate Designated Federal Officer of the National Chemical Transportation Safety Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1419, fax 202–372–8382 or *Ethan.T.Beard@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given in accordance with the *Federal Advisory Committee Act,* (5. U.S.C. Appendix). The National Chemical Transportation Safety Advisory Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192), and codified in 46 U.S.C. 15101. The Committee operates under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. Appendix) and 46 U.S.C. 15109.

Agenda

Day 1

Wednesday, June 8, 2022

The day will be dedicated to subcommittee work:

The subcommittee will address Task Statement 21–01, Recommendations on Loading Limits of Gas Carriers and USCG Supplement to International Hazardous Zone Requirements. The task statement and other subcommittee information is available for viewing at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/task-statements.* The agenda for the discussion will include the following:

(1) Introduction and review subcommittee task statement.

(2) Work on assigned task mentioned above.

(3) Discuss and prepare any proposed recommendations for the full Committee. The full Committee will receive the recommendations on Day 2 of the meeting.

(4) Public comment period.

(5) Adjournment of meeting.

Day 2

Thursday, June 9, 2022

The agenda for the full Committee meeting is as follows:

(1) Call to order.

(2) Roll call, introduction, and swearing-in members; determination of quorum.

(3) Review of November 2, 2021, meeting minutes and status of task items.

(4) U.S. Coast Guard leadership remarks.

(5) Chairman and Designated Federal Officer's remarks.

(6) Committee will review, discuss, and formulate recommendations on the following items:

a. Task Statement 21–01: Recommendations on Loading Limits of Gas Carriers and USCG Supplement to International Hazardous Zone Requirements.

(7) Presentation of the following task statements for Committee discussion and vote:

a. Task Statement 22–01, Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals, Liquefied Gases and LNG;

b. Task Statement 22–02, Recommendations on Industry Best Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries;

c. Task Statement 22–03, Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control Systems.

(8) Subcommittee recommendation(s) discussion.

(9) Public comment period.

(10) Closing remarks/set next meeting date and location.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at: *https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/committee-meetings* no later than June 1, 2022. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meetings as the Committee discusses the issues and prior to deliberations and voting. There will be a public comment period at the end of meetings. Speakers are requested to limit their comments to 2 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: May 12, 2022.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2022–10610 Filed 5–17–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0050]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0005

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0005, Application and Permit to Handle Hazardous Materials; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before June 17, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0050]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0050], and must be received by June 17, 2022.

Submitting Comments

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,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are 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.

We accept anonymous comments. All comments to the Coast Guard 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0005.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 7475, February 9, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Application and Permit to Handle Hazardous Materials.

OMB Control Number: 1625–0005.

Summary: The information is used to ensure the safe handling of explosives and other hazardous materials around ports and aboard vessels.

Need: 46 U.S. C. 70011 (formerly 33 U.S.C. 1225) and 70034 (formerly 1231) authorize the Coast Guard to establish standards for the handling, storage, and movement of hazardous materials on a vessel and waterfront facility. Regulations in 33 CFR 126.17, 49 CFR 176.100, and 176.415 prescribe the rules for facilities and vessels.

Forms: CG–4260, Application and Permit to Handle Hazardous Materials.

Respondents: Shipping agents and terminal operators that handle hazardous materials.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 308 hours to 484 hours a year, due to an increase in the estimated number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: May 13, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–10706 Filed 5–17–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0048]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0039

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of

Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0039, Declaration of Inspection Before Transfer of Liquid Cargo in Bulk; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before June 17, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0048]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0048], and must be received by June 17, 2022.

Submitting Comments

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,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are 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.

We accept anonymous comments. All comments to the Coast Guard 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0039.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 7197, February 8, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Declaration of Inspection Before Transfer of Liquid Cargo in Bulk.

OMB Control Number: 1625–0039.

Summary: A Declaration of Inspection (DOI) documents the transfer of oil and hazardous materials, to help prevent spills and damage to a facility or vessel. Persons-in-charge of the transfer operations must review and certify compliance with procedures specified by the terms of the DOI.

Need: 46 U.S.C. 3703 authorizes the Secretary of the Department of Homeland Security (DHS) to establish regulations to prevent the discharge of oil and hazardous material from vessels and facilities. This authority is delegated by the Secretary to the Coast Guard via the Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2. (II)(92.b).The DOI regulations appear at 33 CFR 156.150 and 46 CFR 35.35–30.

Forms: None.

Respondents: Persons-in-charge of transfers.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 80,051 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: May 5, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–10633 Filed 5–17–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Committee management; notice of open federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency's National Advisory Council (NAC) will meet on June 7 and 8, 2022. The meeting will be open to the public through virtual means.

DATES: The NAC will meet from 10:30 a.m. to 2:00 p.m. Eastern Time (ET) on

Tuesday, June 7, 2022, and from 10:30 a.m. to 7:15 p.m. ET on Wednesday, June 8, 2022. Please note that the meeting may end early if the NAC has completed its business.

ADDRESSES: Anyone who wishes to participate must register with FEMA in advance by providing their name, official title, organization, telephone number, and email address to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 5:00 p.m. ET on Friday, June 3, 2022. Members of the public are urged to provide written comments on the issues to be considered by the NAC. The topic areas are indicated in the **SUPPLEMENTARY INFORMATION** section below. Any written comments must be submitted and received by 5:00 p.m. ET on June 3, 2022, identified by Docket ID FEMA–2007–0008, and submitted via the Federal eRulemaking Portal at *http://www.regulations.gov,* following the instructions for submitting comments below.

Instructions for Submitting Comments: All submissions must include the words ''Federal Emergency Management Agency'' and the docket number (Docket ID FEMA–2007–0008) for this action. Comments received, including any personal information provided, will be posted without alteration at *http://www.regulations.gov.* For access to the docket or to read comments received by the NAC, go to *http://www.regulations.gov,* and search for Docket ID FEMA–2007–0008.

Public comment periods will be held on Tuesday, June 7, 2022, from 11:45 a.m. to 12:00 p.m. ET; and Wednesday, June 8, 2022, from 10:45 a.m. to 11:00 a.m. ET. All speakers must register in advance of the meeting to make remarks during the public comment period and must limit their comments to three minutes. Comments should be addressed to the NAC. Any comments unrelated to the agenda topics will not be considered. To register to make remarks during the public comment period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 5:00 p.m. ET on June 3, 2022. Please note that the public comment period may end before the time indicated, following the last call for comments.

The NAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

FOR FURTHER INFORMATION CONTACT: Rob Long, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184, 202–716–4612, *FEMA-NAC@fema.dhs.gov.* The NAC website is *https://www.fema.gov/about/offices/national-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. appendix.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates input from state, local, tribal, and territorial governments, and the private sector in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from state, local, tribal, and territorial governments, the private sector, and nongovernmental organizations.

Agenda: On Tuesday, June 7, 2022, NAC subcommittees will present to the full NAC on their ongoing work towards annual recommendations regarding the 2022–2026 FEMA Strategic Plan and related goals and objectives, viewable at *https://www.fema.gov/about/strategic-plan.* On Wednesday, June 8, 2022, the NAC will discuss past recommendations and current work with FEMA leadership, and then host several panels focused on issues related to wildland fire, including state, local, tribal, territorial, regional, and federal interagency perspectives.

The full agenda and any related documents for this meeting will be available by Friday, June 3, 2022, by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Deanne Criswell,

Administrator, federal Emergency Management Agency.

[FR Doc. 2022–10662 Filed 5–17–22; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0006; OMB No. 1660–NW133]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Generic Clearance for Civil Rights and Equity

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The notice seeks comments concerning FEMA's collection of demographic characteristics of those who apply for the Agency's programs or disaster assistance.

DATES: Comments must be submitted on or before June 17, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Brian Thompson, Supervisory Emergency Management Specialist, Recovery Directorate, Federal Emergency Management Agency, 540–686–3602, *Brian.Thompson6@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to collect demographic information from those who apply for benefits to improve its approach to ensuring compliance with its civil rights, nondiscrimination and equity requirements, and obligations as outlined in federal civil rights laws such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.

794, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). Such demographic data concerning individuals who participate in or benefit from the Agency's programs and activities will increase FEMA's ability to evaluate the accessibility and distributional equity of their programs and then make alterations or pivot based upon identified areas of concern, thereby demonstrating compliance with civil rights laws.

This proposed information collection previously published in the **Federal Register** on January 25, 2022, at 87 FR 3836 with a 60-day public comment period. FEMA received 32 comments from the public.

Certain comments question the utility and relevance of collecting demographic information from disaster survivors in the context of the equitable and efficient delivery of FEMA's disaster response.[1] Further, the comments ask questions about FEMA's current use of data collected from disasters survivors and how this additional demographic information impacts data being collected by the agency.

FEMA Response: The *Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, as amended,* is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a Federally-declared disaster. Regulations in *44 CFR 206.110—Federal Assistance to Individuals and Households* implements the policy and procedures set forth in Section 408 of the *Stafford Act, 42 U.S.C. 5174,* as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs, and are unable to meet such expenses or needs through other means.

This collection is to ensure that FEMA is equitably reaching all communities and people who require assistance. Affirmatively, upon the approval of this generic clearance, FEMA will obtain information about the demographic characteristics of those who apply for disaster assistance grants; but FEMA will continue to provide financial assistance and services only to those eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs, and are unable to meet such expenses or needs through other means, in accordance with the law. In addition to informing survivors of their privacy rights, this collection also notifies applicants that their response or lack of response to demographic questions will neither positively nor negatively influence their eligibility for grant assistance. Each question has a 'prefer not to answer' response as well in case an applicant wishes to not respond to one or more of the demographic questions.

Among other things, the collection will support FEMA's obligation to assess its policies and programs and ensure that access to and participation in the Individuals and Households Program (IHP) are accomplished in an equitable and impartial manner in accordance with Section 308(a) of the Stafford Act that requires FEMA disaster assistance, including ''the distribution of supplies, the processing of applications, and other relief and assistance activities'' by FEMA and recipients of FEMA financial assistance, and ''be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.'' This will ultimately guide more informed and effective disaster policies that do not exclude or minimize any demographic or section of a community.

As correctly pointed out by the public in these comments, FEMA has historically held the responsibility of meeting civil rights obligations. Its nondiscrimination and equity requirements and obligations are outlined in federal civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act, and the Stafford Act, as well as relevant Executive Orders. The collection of this information is crucial to FEMA's aim of fulfilling our obligations and will permit its program grant offices to identify and remove barriers to application, qualification, and award, and permitting activities directly affecting disaster survivors to identify and remove barriers to equity and enhance programmatic accessibility. As correctly pointed out by the public in these comments, FEMA has historically held the responsibility of meeting civil rights obligations. Its nondiscrimination and equity requirements and obligations are outlined in federal civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act, and the Stafford Act, as well as relevant Executive Orders. The collection of this information is crucial to FEMA's aim of fulfilling our obligations and will permit its program grant offices to identify and remove barriers to application, qualification, and award, and permitting activities directly affecting disaster survivors to identify and remove barriers to equity and enhance programmatic accessibility.

Comment 4 (FEMA–2022–0006–0005): The commenter suggested the ''data collection on race or disability status that it creates more challenges for people in those sectors of life; we should ask for an administrative procedure act to be done so congress can review this. I would like to know how data collected will be used as this needs to be outlined before any disclosure.

FEMA Response: FEMA will obtain information about the demographic characteristics of those who apply for disaster assistance grants in accordance with the law. FEMA uses and shares information with entities such as states, tribes, local governments, and other organizations. FEMA intends to add demographic questions to existing data collections for grant programs. Questions will be included towards the end of a grant collection form and Privacy Act language will clearly notify applicants that their response or lack of response to demographic questions will not influence their eligibility for grant assistance. Each question has a 'prefer not to answer' response as well in case an applicant wishes to not respond to one or more of the demographic questions. Such information is necessary to assess and enforce FEMA's civil rights obligations; its nondiscrimination and equity requirements and obligations as outlined in federal civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act, and the Stafford Act, as well as relevant Executive Orders. Collection of this information will also allow grant offices to identify and remove barriers to application, qualification and award, and permitting activities directly affecting disaster survivors to identify and remove barriers to equity and enhance programmatic accessibility.

Comment 5 (FEMA–2022–0006–0006): The fifth comment was not applicable to this collection.

Comment 6 (FEMA–2022–0006–0007): The sixth comment was not applicable to this collection.

Comment 9 (FEMA–2022–0006–0010): The commenter suggested that in

[1] Comment 1 (FEMA–2022–0006–0002), Comment 2 (FEMA–2022–0006–0003, Comment 3 (FEMA–2022–0006–0004), Comment 7 (FEMA–2022–0006–0008), Comment 8 (FEMA–2022–0006–0009), Comment 14 (FEMA–2022–0006–0015), Comment 15 (FEMA–2022–0006–0016).

addition to asking about race/ethnicity, gender, education, and marital status, would strongly encourage the collection of data regarding, Age, Number of People in the Household (and indicating whether any of the people in the household are children), Homeownership/Renter Status, and Disability Status. All of these factors strongly influence pre and post disaster outcomes, and hence are incredibly important for the agency to collect. Finally, for the gender question, ''Woman'' or ''Man'' would be more appropriate than ''Female'' or ''Male''.''

FEMA Response: In accordance with the law, to include the Privacy Act, FEMA collects all the other data fields suggested except for gender.

Comment 10 (FEMA–2022–0006–0011): The commenter suggested separating the Cognitive/Developmental Disabilities/Mental Health categories into Cognitive/Developmental Disabilities and Mental Health/Behavioral Health; clarifying on all forms that an individual may select all disabilities or conditions that may apply; that FEMA include broad ranges of income among the demographic variables collected; FEMA may wish to ask about health insurance status.

FEMA Response: FEMA does not intend to separate Cognitive Developmental Disability from Mental Health/Behavioral Health. FEMA currently collects data information on whether or not someone has medical insurance. While FEMA asks about medical insurance, the instructions inform applicants to select all that apply.

Comment 11 (FEMA–2022–0006–0012): The eleventh comment was not applicable to this collection.

Comment 12 (FEMA–2022–0006–0013): The commenter suggested we believe that this data collection is (A) necessary for the proper performance of the agency, including that the collection and use of this data will have practical utility; (B) useful and that a few additional data collection points may be identified and added to this proposal at minimum expense if incorporated with this proposed change; (C) this data will enhance the quality, utility, and clarity of the information to be collected; and (D) the collection techniques identified will minimize the burden of collection.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 13 (FEMA–2022–0006–0014): The commenter suggested that to fully meet the nondiscrimination requirements of the Stafford Act, FEMA should also ask for applicants' age in addition to race, ethnicity, and gender. FEMA should publicly commit to making demographic data, absent personal identifying information (PII), available via the OpenFEMA data portal on an ongoing basis. FEMA should also implement a transparent process for sharing applicant data, including PII data, with qualified research institutions to ensure the data are utilized to their full potential and to also ensure the Agency's accountability to the Civil Rights Act and the Stafford Act. FEMA should work with other federal agencies, like HUD and the Small Business Administration (SBA), to further enhance the utilization of these demographic data.

FEMA Response: FEMA is strengthening interagency data-sharing to support improved modeling and information sharing. FEMA collects the applicant's age during registration intake. FEMA does not release this data via OpenFEMA and does not intend to do so.

Comment 16 (FEMA–2022–0006–0017): The commenter appreciates the value of the data collected for the purpose of determining whether minority populations are adversely impacted relative to relief provided by FEMA. Determining the magnitude of the problem and identifying its source is necessary before change can occur.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 17 (FEMA–2022–0006–0018): The commenter suggested providing the specific information that FEMA proposes to collect; clarifying how this information will be used to prevent discrimination and how it will benefit survivors. Clarify whether the additional questions will be optional or required for eligibility of FEMA benefits. Survivors have a wide range of experience and reading/writing/and language comprehension. Explain how FEMA will ensure that the additional questions will not be intimidating to/uncomfortable for survivors. If FEMA chooses to ask about citizenship, explain how it plans to ensure that this does not deter applicants from applying. Ensure the data collection process will be trauma informed. FEMA's forms should be reviewed by a panel of advocates from non-profit agencies who work with these unserved/underserved populations to include considerations for cultural competence, language, age, disability, literacy level, housing status, etc.

FEMA Response: FEMA does not currently collect data about citizenship of an applicant or household members and is not adding a citizenship question via this collection. FEMA will obtain information about the demographic characteristics of those who apply for disaster assistance grants in accordance with the law, to include Section 504 of the Rehabilitation Act. FEMA uses and shares information with entities such as states, tribes, local governments, and other organizations. FEMA intends to add demographic questions to existing data collections for grant programs. Questions will be included towards the end of a grant collection form and Privacy Act language will clearly notify applicants that their response or lack of response to demographic questions will not influence their eligibility for grant assistance. Each question has a 'prefer not to answer' response as well in case an applicant wishes to not respond to one or more of the demographic questions. Such information is necessary to assess and enforce FEMA's civil rights obligations; its nondiscrimination and equity requirements and obligations as outlined in federal civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act, and the Stafford Act, as well as relevant Executive Orders. Collection of this information will also allow grant offices to identify and remove barriers to application, qualification and award, and permitting activities directly affecting disaster survivors to identify and remove barriers to equity and enhance programmatic accessibility. FEMA forms are reviewed by appropriate entities within the Agency, DHS, and OMB, to include the Office of Equal Rights and External Affairs.

Comment 18 (FEMA–2022–0006–0019): The commenter strongly supports the collection of additional data, including information on race, ethnicity, Tribal membership, gender, age, income, disability status, status as a female headed household or not, and status as a renter or not.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 19 (FEMA–2022–0006–0020): The commenter strongly supports FEMA collecting demographic information from those who apply for benefits. Unless FEMA understands applicants' demographics, it will not be possible to ensure that FEMA benefits are equitably distributed and helping those who need it most.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 20 (FEMA–2022–0006–0021): The commenter implores FEMA to include a category for individuals of ''Middle Eastern or North African'' (MENA) descent to identify among the list of racial and ethnic group categories into which they disaggregate demographic data collected under this information collection activity.

FEMA Response: FEMA's Individual Assistance program has added demographic application questions related to the race, ethnicity, and tribal membership. In the future, FEMA will aim to identify and address potential access barriers and disparate outcomes based on the information collected, instead of only collecting data that directly supported the implementation of the program. FEMA will be adding the ethnic group question to the data collection for submission to the Office of Management & Budget (OMB).

Comment 21 (FEMA–2022–0006–0022): The commenter suggested that to ensure FEMA is fulfilling nondiscriminatory obligations, an opportunity must be afforded to applicants to disclose specific demographic information. Publicly available information from FEMA could assist in ensuring access to justice in a disaster. FEMA has an opportunity to improve the operational outcomes for vulnerable communities by implementing inclusive processes. Inclusive demographics, as a metric, is a quantitative measure that can provide certainty of FEMA's legal obligations to ensure that disaster assistance is distributed in an equitable manner without discrimination.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 22 (FEMA–2022–0006–0023): The commenter strongly supports the additional collection of data by FEMA, particularly as applied to race, ethnicity, tribal status, and gender identity. The collection of the proposed data, its application to FEMA emergency response practices, and its matching with HUD data in support of long-term recovery and mitigation is one more step toward more equitable and effective program design and resources application. As this data is integrated into the recently implemented FEMA and HUD data matching, both should establish procedures to make this data (with personal identifying information (PII) redacted) available to the public. We applaud FEMA's additional data collection, and we hope that this new data collection will help spur continued improvements in data transparency.

FEMA Response: FEMA is undertaking an assessment of equity outcomes of several mitigation, federal insurance, preparedness, and grant programs. Based on the National Advisory Council (NAC) recommendations and other inputs, efforts to improve equity outcomes will include: Engaging with State, Local, Tribal, and Territorial (SLTT) partners by discussing key elements of the new Building Resilient Infrastructure and Communities (BRIC) program, providing a grant program and funding priority overview, preparing underserved applicants to apply for disaster assistance, and publishing the Mitigation Action Portfolio, a new resource to introduce stakeholders to the BRIC grant program and the array of eligible hazard mitigation activities. Furthermore, the FEMA Intergovernmental Affairs (IGA) Tribal Partner Team is developing a training plan for internal staff to better understand tribal nations' government structures, heritage, and culture.

Comment 23 (FEMA–2022–0006–0024): The commenter is *pleased* to respond to the Federal Emergency Management Agency (FEMA) request for comments on FEMA's proposed collection of demographic characteristics of those who apply for the Agency's programs or disaster assistance; to fulfill its Congressional mandate and ensure that federal disaster relief truly serves the most vulnerable, FEMA must collect the information necessary to assess its activities; applaud FEMA's efforts in moving forward to ensure this obligation is met.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 24 (FEMA–2022–0006–0025): The commenter suggested that FEMA should explicitly seek to assist those who were most vulnerable before a disaster. We recommend consideration of an approach like Housing and Urban Development's Community Development Block Grant Disaster Recovery program, which ensures a majority of its funding goes to primarily benefit low- and moderate-income households. FEMA must also consider collecting demographic information in its hazard mitigation programs, such as the Hazard Mitigation Grant Program and Building Resilient Infrastructure and Communities programs.

FEMA Response: FEMA and stakeholders are reviewing changes to the Threat Hazard Identification and Risk Assessment (THIRA) and the Stakeholder Preparedness Review (SPR) to capture vulnerabilities, capability gaps, and target levels of capability for at-risk communities and ensure equitable funding distribution related to planning, preparedness, mitigation, and recovery outcomes.

Comment 25 (FEMA–2022–0006–0026): The twenty-fifth comment received is a duplicate of the twenty-fourth comment.

Comment 26 (FEMA–2022–0006–0027): The commenter suggested that FEMA's proposal to add the additional demographic questions to the Individual and Households Program registration will help promote transparency and analysis towards improving equity in its programs. FEMA is meeting this equity requirement. Demographic questions should be added to every form of the application, whether the applicant applies online through *disasterassistance.gov*, via phone through the FEMA helpline, or in person at a Disaster Recovery Center. Because application barriers are most likely to affect underserved populations, equity would be furthered by broadening demographic information collection to include everyone who begins the application for FEMA benefits, including those who do not ultimately receive a registration number. Applicants see ''Identification Verification Error'' on their screen with a vague explanation that FEMA is unable to verify important information needed to complete the online registration. FEMA could make demographic information regarding applicants' race, income, gender, age, and disability-status available via OpenFEMA data sets.

FEMA Response: FEMA is considering policy recommendations that better align funding distribution to support at-risk communities. These recommendations include providing for the security and needs of underserved and historically marginalized communities more effectively; the assessment will investigate barriers to program participation including program awareness, ease of application, eligibility, and qualification requirements, as well as identifying where funding has not been previously awarded. FEMA is strengthening interagency data-sharing to support improved modeling and information sharing. FEMA collects the applicant's age during registration intake. Currently, FEMA does not release this data via OpenFEMA or research institutions.

Comment 27 (FEMA–2022–0006–0028): The commenter understands the need of a FEMA effort to collect demographic information to ensure compliance with Federal civil rights requirements and the equitable implementation of emergency management policies and programs; however, there does need to be further discussion in how such data will be used post collection and incorporated in grant timelines.

FEMA Response: FEMA is currently developing a comprehensive approach to advancing equity using the requirements of Executive Order (E.O.) 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, issued on January 20, 2021. Determining if new or updated policies, regulations, or guidance documents are necessary to advance equity in agency actions and programs; reviewing strategies of resource allocation to increase investment that advance equity in underserved communities; consulting with members of historically underrepresented and underserved communities to evaluate opportunities and develop approaches to advancing equity by increasing coordination, communication, and engagement with community-based and civil rights organizations; studying FEMA data collection programs, policies, and infrastructure, identifying any deficiencies, and working to implement actions that expand and refine data used to measure equity.

Comment 28 (FEMA–2022–0006–0029): The commenter suggested regarding the Data Collection that FEMA has not yet said who will have access to the demographic data, what the data will be used for, and what training there will be for those handling the data. Private demographic data may create impenetrable insulation for FEMA decision making, meaning any time claims of inequity or discrimination are levied against FEMA or one of FEMA's programs, FEMA could use this data as a shield justifying its actions.

FEMA Response: FEMA will obtain information about the demographic characteristics of those who apply for disaster assistance grants in accordance with the law, to include the Privacy Act. FEMA uses and shares information with entities such as states, tribes, local governments, and other organizations. FEMA intends to add demographic questions to existing data collections for grant programs. Questions will be included towards the end of a grant collection form and Privacy Act language will clearly notify applicants that their response or lack of response to demographic questions will not influence their eligibility for grant assistance. Each question has a 'prefer not to answer' response as well in case an applicant wishes to not respond to one or more of the demographic questions. Such information is necessary to assess and enforce FEMA's civil rights obligations; its nondiscrimination and equity requirements and obligations as outlined in federal civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act, and the Stafford Act, as well as relevant Executive Orders. Collection of this information will also allow grant offices to identify and remove barriers to application, qualification and award, and permitting activities directly affecting disaster survivors to identify and remove barriers to equity and enhance programmatic accessibility.

Comment 29 (FEMA–2022–0006–0030): The commenter strongly supports the proposal to collect demographic data, including data on race, ethnicity, and gender, from applicants for FEMA's Individuals and Households Program (IHP). Collecting this data is critical to the agency's ability to comply with its civil rights obligations under federal law, as well as compliance with Executive Orders 13985, 13990, and 14008. FEMA is unable to accurately assess its compliance with civil rights, nondiscrimination, and equity requirements and obligations without collecting this data. FEMA should collect additional demographic data in order to fully meet the nondiscrimination requirements of the Stafford Act and other civil rights and equity requirements and obligations, and make data publicly available. FEMA has a legal and ethical obligation to ensure that its programs are equitable and nondiscriminatory. FEMA's proposed data collection is necessary and appropriate.

FEMA Response: From FEMA Directive #262–1: Data Sharing to the maximum extent possible, FEMA will make non-sensitive data available, in multiple formats, to the public, in order to promote transparency, and to enhance the whole community's ability to make informed decisions on prevention, preparedness, mitigation, response, and recovery efforts. FEMA Program Offices will publish non-sensitive, non-PII information online in a manner that promotes analysis and reuse for the widest possible range of purposes, meaning that the information is publicly accessible, machine-readable, appropriately described, complete, and timely.

Comment 30 (FEMA–2022–0006–0031): The commenter applauds FEMA's efforts to address longstanding equity concerns with the agency's provision of services and funding. The first step, however, to addressing these concerns is understanding the nature and extent of the problem. To that end, we support the agency's decision to begin collecting demographic data of aid recipients. FEMA has a legal obligation to administer its programs in an equitable manner. FEMA must collect data that allows it to accurately track who receives its funding. In order to meet its obligations under Title VI and other nondiscrimination statutes, FEMA must collect demographic information.

FEMA Response: FEMA is constantly working to improve our delivery of assistance and streamline our processes for disaster applicants and appreciates your evaluation of our data collection.

Comment 31 (FEMA–2022–0006–0032): The commenter suggested FEMA should regularly collect data and partner with researchers to investigate and track whether policies, programs, and regulations are achieving equitable outcomes; recommends that FEMA develop a robust evaluation plan that includes data collection, identification of equity benchmarks, and metrics and measures to assist with reporting.

FEMA Response: FEMA's Office of Equal Rights coordinated and hosted three civil rights summits for external stakeholders. Motivated by FEMA's core values of compassion, fairness, integrity and respect, the civil rights summits sought to engage FEMA and its stakeholders in collaborative dialogue aimed at identifying actual and perceived biases impacting equal access to FEMA's programs and services. The goal of the summits was to start a conversation about equity, equal access, and implementation with members of the public with first-hand knowledge about how FEMA can better meet the needs of underserved and historically marginalized communities before, during, and after disasters. The summits focused on three areas: Multi-cultural communities, disability communities, and environmental justice issues throughout disasters. The sessions included presentations from the main FEMA program offices that serve survivors and senior level panel discussions stemming from questions presented by attendees.

Comment 32 (FEMA–2022–0006–0033): The thirty-second comment was not applicable to this collection.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below

to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Generic Clearance for Civil Rights and Equity.

Type of Information Collection: New information collection.

OMB Number: 1660–NW133.

FEMA Forms: Under the Generic Clearance, each FEMA component will submit their specific forms for the collection of demographics. FEMA Form: FF–256–FY–21–100, Generic Clearance Civil Rights and Equity. The Agency is prepared to add these questions to the Individuals and Households program registration, FF–104–FY–21–123 (formerly FEMA Form 009–0–1T (English)), Tele-Registration, Disaster Assistance Registration, FF–104–FY–21–125 (formerly FEMA Form 009–0–1Int (English)), internet, Disaster Assistance Registration, FF–104–FY–21–122 (formerly FEMA Form 009–0–1 (English)), Paper Application/Disaster Assistance Registration. The demographic data will help the Individuals and Households program improve operational outcomes for vulnerable communities by using analysis of demographic data against program outcomes to evaluate whether any disparities in eligibility determinations appear to impact vulnerable communities. FEMA would then use this data to determine how to improve service delivery for all survivors. FEMA expects a burden of no more than 5 minutes per registration to answer the additional questions, with the entire estimated annual burden outlined below.

Abstract: The Federal Emergency Management Agency will use the demographic characteristics collected from applicants and beneficiaries to assess its civil rights, nondiscrimination and equity requirements, and obligations as outlined in federal civil rights laws such as the Civil Rights Act, Rehabilitation Act, and the Stafford Act.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 938,800.

Estimated Number of Responses: 938,800.

Estimated Total Annual Burden Hours: 78,202.

Estimated Total Annual Respondent Cost: $3,176,565.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $3,814,696.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–10620 Filed 5–17–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–C–15; OMB Control No.: 2529–0011]

30-Day Notice of Proposed Information Collection: Comment Request ''Report Housing Discrimination'' Form HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, HUD–903–1_Somali

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Correction notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment. The proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved information collection for HUD Form Series HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, and HUD–903–1_Somali will be submitted to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act of 1995. HUD is soliciting comments from all interested parties on the proposed reinstatement of this information collection. This notice replaces the notice HUD publish on May 6, 2022 at 87 FR 27178.

DATES: Comment Due Date: June 17, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 25, 2021 at 86 FR 33721.

HUD is submitting this proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved information collection to the OMB for review, as required by the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

HUD has revised the previous title of the HUD Form Series HUD–903.1 information collection from ''Housing Discrimination Information Form'' to ''Report Housing Discrimination (''Form'').'' This revised title emphasizes that submitting a ''Report Housing Discrimination'' Form to HUD is *not* equivalent to filing a jurisdictional housing discrimination complaint with HUD. The proposed minor text revisions comply with the procedures described in HUD's Fair Housing Act regulation at 24 CFR part 103, subpart B, Subsections 103.10, 103.15, 103.20, 103.25, 103.30, 103.35,

and 103.40. The revised Form also provides a complete list of mailing addresses, email addresses, and fax numbers for HUD's ten (10) Regional Fair Housing and Equal Opportunity (FHEO) Offices.

The proposed minor text revisions to HUD Form Series HUD–903.1 will not increase the information collection burden for aggrieved persons. Both the previous and revised Forms ask an aggrieved person to provide their full name; address; phone and/or email contact information; and alternative contact information. Both Forms also ask the aggrieved person to answer five (5) preliminary questions that may establish HUD's authority (jurisdiction) to file and investigate a Fair Housing Act complaint.

The proposed minor text revisions to HUD Form Series HUD–903.1 will not increase the total annual burden hours for aggrieved persons who submit the Form to HUD via the internet. Therefore, HUD does not believe that the time for completing the online version of the Form will exceed the current 45-minute time limit for internet submissions.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved collection of information concerning alleged discriminatory housing practices under the Fair Housing Act [42 U.S.C. 3601 *et seq.*]. The Fair Housing Act prohibits discrimination in the sale, rental, occupancy, advertising, and insuring of residential dwellings; and in residential real estate-related transactions; and in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin. The Fair Housing Act also makes it unlawful to coerce, intimidate, threaten, or interfere with any person who has (1) exercised their fair housing rights; or (2) aided or encouraged another person to exercise their fair housing rights.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that they will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurred or terminated. HUD has designed ''Report Housing Discrimination'' Form HUD–903.1 to promote consistency in the documents that, by statute, must be provided to persons against whom complaints are filed [''*respondents*''], and for the convenience of the general public. Section 103.25 of HUD's Fair Housing Act regulation describes the information that must be included in each complaint filed with HUD. For purposes of meeting the Act's one-year time limitation for filing complaints with HUD, complaints need not be initially submitted on the Form that HUD provides. ''Report Housing Discrimination'' Form HUD–903.1 (English language), HUD–903.1A (Spanish language), HUD–903.1B (Chinese language), HUD–903.1C (Arabic language), HUD–903.1F (Vietnamese language), HUD–903.1CAM (Cambodian language), HUD–903.1KOR (Korean language), HUD–903.1RUS (Russian language), and HUD–903–1_ (Somali language) may be submitted to HUD by mail, in person, by facsimile, by email, or via the internet to HUD's Office of Fair Housing and Equal Opportunity (FHEO). FHEO staff uses the information provided on the Form to verify HUD's authority to investigate the aggrieved person's allegations under the Fair Housing Act.

A. Overview of Information Collection

Proposed Revised Title of Information Collection: ''Report Housing Discrimination''.

OMB Control Number: 2529–0011.

Type of Request: Proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved information collection.

Form Number: HUD–903.1.

Description of the need for the information and proposed use: HUD uses ''Report Housing Discrimination'' Form HUD–903.1 (Form) to collect pertinent information from persons wishing to file housing discrimination complaints with HUD under the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate in the sale, rental, occupancy, advertising, or insuring of residential dwellings; or to discriminate in residential real estate-related transactions; or in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin. The Fair Housing Act also makes it unlawful to coerce, intimidate, threaten, or interfere with any person who has (1) exercised their fair housing rights; or (2) aided or encouraged another person to exercise their fair housing rights.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that they will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. The Form promotes consistency in the collection of information necessary to contact persons who file housing discrimination complaints with HUD. It also aids in the collection of information necessary for initial assessments of HUD's authority to investigate alleged discriminatory housing practices under the Fair Housing Act. This information may subsequently be provided to persons against whom complaints are filed [''*respondents*''], as required under section 810(a)(1)(B)(ii) of the Fair Housing Act.

Agency form numbers, if applicable: Form HUD–903.1 (English), Form HUD–903.1A (Spanish), Form HUD–903.1B (Chinese), Form HUD–903.1C (Arabic), Form HUD–903.1F (Vietnamese), Form HUD–903.1CAM (Cambodian), Form HUD–903.1KOR (Korean), Form HUD–903.1RUS (Russian), and Form HUD–903–1_(Somali).

Members of affected public: Individuals or households; businesses or other for-profit, not-for-profit institutions; State, Local, or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses: During FY 2021, HUD staff received approximately 24,290 information submissions from persons wishing to file housing discrimination complaints with HUD. Of this total, HUD received 1,546 complaint submissions by telephone. The remaining 22,744 complaint submissions were transmitted to HUD by mail, in-person, by email, and via the internet. HUD estimates that an aggrieved person requires approximately 45 minutes in which to complete this Form. The Form is completed once by each aggrieved person. Therefore, the total number of annual burden hours for this Form is 17,058 hours.

$22{,}744 \times 1$ (frequency) $\times$ 45 minutes (.75 hours) = 17,058 hours.

Annualized cost burden to complainants: HUD does not provide postage-paid mailers for this information collection. Accordingly, aggrieved persons choosing to submit this Form to HUD by regular mail must pay the United States Postal Service's (USPS) prevailing First Class Postage rate. As of the date of this Notice, the annualized cost burden per person, based on a one-time submission of this Form to HUD via the USPS's First Class Postage rate, is Fifty-Eight Cents ($0.58)

per person. During FY 2021, FHEO staff received approximately 983 submissions of potential complaint information by mail. Based on this number, HUD estimates that the total annualized cost burden for aggrieved persons who submit this Form to HUD by mail is $570.00. Aggrieved persons may also submit this Form to HUD in person, by facsimile, by email, or electronically via the internet.

Status of the proposed information collection: Proposed reinstatement, with revised title and minor text revisions, of an expired, previously approved collection of pertinent information from persons wishing to file Fair Housing Act complaints with HUD.

B. Solicitation of Public Comments

This Notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed information collection is necessary for the performance of the agency's functions;

(2) Whether the agency's estimate of burdens imposed by the information collection is accurate;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burdens of the information collection on aggrieved persons, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comments in response to these questions.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–10686 Filed 5–17–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–21; OMB Control No. 2577–0208]

30-Day Notice of Proposed Information Collection: HOPE VI Implementation and HOPE VI Main Street Programs: Funding and Program Data Collection

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: June 17, 2022.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 9, 2022 at 87 FR 13305.

A. Overview of Information Collection

Title of Proposal: HOPE VI Implementation and HOPE VI Main Street Programs.

OMB Control Number: 2577–0208.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–52825–A, HUD–52861, HUD–53001–A.

Description of the need for the information and proposed use: Section 24 of the U.S. Housing Act of 1937, as added by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) and revised by the HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003), established the HOPE VI program for the purpose of making assistance available on a competitive basis to public housing agencies (PHAs) to improve the living environment for public housing residents of severely distressed public housing projects (or portions thereof); and, beginning in Fiscal Year 2004, to rejuvenate the traditional or historic downtown areas of smaller units of local government. Funds were appropriated for competitive HOPE VI Implementation Notices of Funding Availability (NOFAs) through Fiscal Year 2011.

Remaining HOPE VI Implementation grants account for most of the burden. However, HOPE VI funds are no longer being appropriated. HOPE VI Main Street funds are being funded through the Choice Neighborhoods Initiative appropriations. Currently, there are approximately 35 HOPE VI Implementation grants that remain active and must be monitored by HUD. HUD publishes competitive bi-annual NOFAs for the HOPE VI Main Street program and monitors grants that have been awarded through those NOFAs. These information collections are required in connection with the monitoring of the remaining active HOPE VI Implementation grants and the bi-annual publication on *http://www.grants.gov* of HOPE VI Main Street NOFAs, contingent upon available funding and authorization, which announce the availability of funds provided in annual appropriations for Section 24 of the Housing Act of 1937, as amended.

Eligible units of local government interested in obtaining HOPE VI Main Street grants are required to submit applications to HUD, as explained in each NOFA. The information collection conducted in the applications enables HUD to conduct a comprehensive, merit-based selection process in order to identify and select the applications to receive funding. With the use of HUD-prescribed forms, the information collection provides HUD with sufficient

information to approve or disapprove applications.

Applicants that are awarded HOPE VI Implementations grants are required to report on a quarterly basis on their Implementation grant revitalization activities. HOPE VI Implementation grantees do this by sending emails to the HUD grant managers. HUD reviews and evaluates the collected information and uses it as a primary tool with which to monitor the status of HOPE VI projects and programs.

Members of affected public: Public Housing Agencies, Units of Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Collection	Respondents	Frequency per annum	Responses per annum	Burden per response	Burden per annum	Hourly cost per response	Annual cost
HOPE VI Main Street Application:							
Main Street NOFA Narrative Exhibits	5	0.5	2.5	80	200	[1] $58	$11,600
Main Street NOFA 52861 Application Data Sheet	5	0.5	2.5	15	37.5	58	2,175
Main Street NOFA Project Area Map	5	0.5	2.5	1	2.5	58	145
Main Street NOFA Program Schedule	5	0.5	2.5	4	10	58	580
Main Street NOFA Photographs of site	5	0.5	2.5	5	12.5	58	725
Main Street NOFA Five-year Pro-forma	5	0.5	2.5	5	12.5	58	725
Main Street NOFA Site Plan and Unit Layout	5	0.5	2.5	10	25	58	1,450
Subtotal	35		17.5		300		17,400
Non-NOFA Collections:							
Quarterly Reporting	35	4	140	1	140	58	8,120
52825–A HOPE VI Budget updates	40	1	40	1	40	58	2,320
53001–A Actual HOPE VI Cost Certificate	55	1	55	0.5	27.5	58	1,595
Subtotal	130		235		207.5		12,035
Total Burden	165		252.5		507.5		29,435

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

[1] Staff filling out these forms typically hold positions equivalent to a GS–14. Therefore, the hourly basic rate used for this calculation is the 2022 hourly rate for a GS–14 Step 9.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–10687 Filed 5–17–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–19; OMB Control No. 2577–0281]

30-Day Notice of Proposed Information Collection: Jobs Plus

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 17, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 10, 2022 at 87 FR 13747.

A. Overview of Information Collection

Title of Information Collection: Public Housing Grants Support for Payment Voucher.

OMB Approval Number: 2577–0299.

Type of Request: Extension.

Form Number: SF–425, HUD–XXXXX.

Description of the need for the information and proposed use: HUD will require Public Housing Authorities (PHAs) to provide justification and support for vouchers drawing down certain Operating Fund grant and other supplemental or Public Housing grant funds from HUD's Line of Credit Control System (eLOCCS). The PHAs must provide justification and support that the expenditure of the grant funds is for eligible activities and meets the terms and conditions of the grant.

Respondents: Public Housing Authorities (PHAs).

Estimated Number of Respondents: 539 annually.

Estimated Number of Responses: 6,000 annually.

Frequency of Response: Frequency of response is estimated to be 6,000 total annually. PHAs are only required to submit forms when the department requires the PHA to provide support for voucher requests to drawdown grant funds.

Burden Hours per Response: Burden hours per response for a Support for Payment Vouchers form is 30 minutes.

Total Estimated Burdens: Total burden hours is estimated to be 3,000. Total burden cost is estimated to be $107,730.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–10684 Filed 5–17–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–20; OMB Control No.: 2577–0274]

30-Day Notice of Proposed Information Collection: Energy and Performance Information Center (EPIC)

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 17, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 9, 2022 at 87 FR 13305.

A. Overview of Information Collection

Title of Information Collection: Energy and Performance Information Center (EPIC).

OMB Approval Number: 2577–0274.

Type of Request: Revision of a currently approved collection.

Form Numbers: N/A—all information collected electronically through the EPIC data system.

Description of the need for the information and proposed use: The EPIC data system automates the previous paper collection of the Five-year Plan and Annual Statement/Budget/Performance and Evaluation (P&E) forms from grantees. These are required forms that were previously collected in hard copy on Forms HUD 50075.1 and HUD 50075.2 under collection OMB control number 2577–0157. These forms collect data on the eventual, and actual use of funds. Electronic collection will enable the Department to aggregate information about the way grantees are using Federal funding. Tracking of the use of Federal funds paid through the Public Housing Capital Fund, the only Federal funding stream dedicated to the capital needs of the nation's last resort housing option, is crucial to understanding how the Department can properly and efficiently assist grantees in meeting this goal as well as assessing the Department's own progress. EPIC also automates the collection of signed documents required by 24 CFR 905 in order to gain access to funds awarded by HUD. These forms are covered under other PRAs. Finally, EPIC allows PHAs to request to use additional funding sources, such as Operating Funds, for capital fund eligible activities.

The EPIC data system is equipped to collect Physical Needs Assessment (''PNA'') data, should this data be required in the future. This data being in the system coupled with the electronic planning process would streamline grantee planning. The EPIC data system is equipped to collect information about the Energy Performance Contract (''EPC'') process, including the energy efficiency improvements. As the Department moves to shrink its energy footprint in spite of rising energy costs, clear and comprehensive data on this process will be crucial to its success. The EPIC data system is equipped to track

development of public housing with Federal funds and through other means, including mixed-finance development.

Respondents: Members of Affected Public: State, Local or Local Governments and Non-profit organizations.

Estimated Number of Respondents: See table below.

Estimated Number of Responses: See table below.

Frequency of Response: See table below.

Average Hours per Response: See table below.

Total Estimated Burdens: See table below.

Form/document	Number of respondents	Frequency	Total responses	Hours per response	Total hours	Cost per hour	Total cost
1 Core Activity	2,8000	1	2,800	2	5,600	$44.10	$246,960
2 5-Yr Plan	2,000	1	2,000	2	4,000	44.10	176,400
3 Annual Stmt/Budget	2,800	3	8,400	1	8,400	44.10	370,440
4 P&E	2,800	0.5	1,475	1	1,475	44.10	65,048
5 Document Management Center	2,800	2	5,600	0.5	2,800	44.10	123,480
6 Additional Capital Resources	15	1	15	0.5	7.5	44.10	331
6 EPC	30	1	30	120	3,600	44.10	158,760
7 Public Housing Development	60	1	60	120	7,200	44.10	317,520
8 Mixed Finance Early Warning	60	1	60	0.33	20	44.10	882
Totals	2,800	Varies	20,440	Varies	33,102.5	44.10	1,459,820

The follow are the specific revisions to the public burden by instrument:

1. The projected labor burden was decreased for Core Activity due to grantees becoming familiar with navigating that aspect of the EPIC system and because submissions after the first reporting cycle for a grant will be an update to the initial submitted report and will require less labor to complete. This reduced hours from the collection 3,250 hours.

2. P&E Reports are no longer required annually, reducing the number of responses and hours by 7,025.

3. RHF data will no longer be collected as that program is being phased out of CFP, reducing the number of collection hours by 25.

4. The Annual Statement/Budget total number of responses dropped by 100 due to the total number of respondents being lowered.

5. EPIC now collects copies of documents previously submitted on paper covered by CFP, Annual Plan and ACC PRA adding collection hours of 2,800.

6. EPIC has added a way for PHA to request to use additional capital resources via EPIC, increasing collection hours of 7.5.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–10685 Filed 5–17–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/ A0A501010.999900]

Self-Governance PROGRESS Act Negotiated Rulemaking Committee Establishment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of establishment.

SUMMARY: The Department of the Interior (DOI) is establishing the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee). The Committee will negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Hanvey, Designated Federal Officer; telephone: (918) 931–0745; email: *Vickie.hanvey@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 2020, the PROGRESS Act was signed into law. *See* Public Law 116–180. The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act calls for a negotiated rulemaking committee to be established under 5 U.S.C. 565, with membership consisting only of representatives of Federal and Tribal governments, with the Office of Self-Governance serving as the lead agency for the DOI. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

On February 1, 2021, a notice in the **Federal Register** (86 FR 7656) announced the DOI's intent to form the negotiated rulemaking committee under the PROGRESS Act. On November 23, 2021, a notice in the **Federal Register** (86 FR 66491) announced the proposed membership. The Committee will

negotiate and advise the Secretary on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act). The November 23, 2021, notice discussed the issues to be negotiated and the interest group representatives proposed as members of the Committee. The Secretary received additional proposed nominations in response to the notice and considered the nominations based on the qualifications outlined in the notice for approval. The nominees were approved to join the Committee and are included in this **Federal Register** notice.

The purpose of the Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), and the Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561 *et seq.*). The Committee will use a negotiated rulemaking process to develop regulations for implementation of the PROGRESS Act to amend, delete, and add provisions to the existing regulations at 25 CFR part 1000 Annual Funding Agreements Under the Tribal Self-Government Act Amendments to the Indian Self-Determination and Education Act, which addresses Tribal Self-Governance compacts. All open public meetings will be published in future **Federal Register** notice.

II. Committee Membership

The Committee will be formed in full compliance with the requirements of the NRA, FACA, and the PROGRESS Act. The Secretary appoints the following seven primary Tribal representatives to the Committee.

Appointed primary tribal representative	Affiliation
W. Ron Allen, Chairman/CEO	Jamestown S'Klallam Tribe.
Melanie Benjamin, Chief Executive	Mille Lacs Band of Ojibwe.
Richard Peterson, President	Central Council of the Tlingit and Haida Indian Tribes of Alaska.
Michael Dolson, Councilman	The Confederated Salish and Kootenai Tribes of the Flathead Reservation.
Melanie Fourkiller, Director of Self-Governance	Choctaw Nation of Oklahoma.
Russel (Buster) Attebery, Chairman	Karuk Tribe.
Karen Fierro, Self-Governance Director	Ak-Chin Indian Community.

The Secretary appoints the following seven alternate Tribal representatives:

Appointed alternate tribal representative	Affiliation
Sandra Sampson, Board Treasurer	Confederated Tribes of the Umatilla Indian Reservation.
Jennifer Webster, Councilwoman	Oneida Nation.
Gerry Hope, Transportation Director, Former Tribal Leader	Sitka Tribe of Alaska.
Jody LaMere, Councilwoman	Chippewa Cree Indians of the Rocky Boy's Reservation.
Lana Butler, Secretary	Sac and Fox Nation.
Will Micklin, Second Vice President	Central Council of the Tlingit and Haida Indian Tribes of Alaska.
Annette Bryan, Council Member	Puyallup Tribes of Indians.

The Secretary appoints the following six primary Federal representatives:

Name	Affiliation
Sharee Freeman, Director	Office of Self-Governance, Assistant Secretary—Indian Affairs.
Bryan Shade, Attorney-Advisor	Division of Indian Affairs, Office of the Solicitor.
Kelly Titensor, Native American Affairs Advisor	Bureau of Reclamation.
Bryon Loosle, Division Chief	National Conservation Lands, Bureau of Land and Minerals Management.
Scott Aikin, National Native American Programs Coordinator	U.S. Fish and Wildlife Service Head Quarters.
Rose Petoskey, Senior Counselor to the Assistant Secretary—Indian Affairs.	Office of the Assistant Secretary—Indian Affairs.

The Secretary appoints the following six alternate Federal representatives:

Name	Affiliation
Matt Kallappa, Northwest Field Office Manager	Office of Self-Governance, Assistant Secretary—Indian Affairs.
Jody Schwarz, Attorney-Advisor	Division of Indian Affairs, Office of the Solicitor.
Vicki Cook, Native American and International Affairs Office	Bureau of Reclamation.
C. David Johnson, Tribal Liaison	Bureau of Land and Minerals Management.
Dorothy FireCloud, Native American Affairs Liaison	National Park Service.
Samuel Kohn, Senior Counselor to the Assistant Secretary—Indian Affairs.	Office of the Assistant Secretary—Indian Affairs.

III. Public Disclosure of Comments

Written comments may be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section above. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that DOI withhold your personal identifying information from public review, DOI cannot guarantee that it will be able to do so.

IV. Authority

This notice is published in accordance with the NRA, FACA, and the PROGRESS Act.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–10583 Filed 5–17–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033924; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management, Alaska State Office (BLM) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the BLM at the address in this notice by June 17, 2022.

FOR FURTHER INFORMATION CONTACT: Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK. The human remains were removed from King Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the BLM with the help of the University of Alaska Museum of the North professional staff and in consultation with representatives of the King Island Native Community.

History and Description of the Remains

At some unknown date between the late 1940s and the late 1970s, human remains representing, at minimum, one individual were removed from an unknown location on King Island by William Laughlin. During those years, Laughlin was associated, variously, with several universities. The human remains listed in this notice were found at the University of Michigan Museum of Anthropological Archaeology in Ann Arbor. They had been deposited there due to Laughlin's collaboration on archeological work in Alaska with Ted P. Bank II of the University of Michigan. Realizing the human remains had been removed from BLM lands on King Island, in 2014, the University of Michigan transferred the human remains to the Bureau of Land Management in Anchorage, AK. In late 2018, BLM transferred the human remains to the University Museum of the North in Fairbanks, AK, for temporary housing pending repatriation. The human remains, comprising one tooth and multiple cranial fragments, belong to an adult of unknown sex. No known individual was identified. No associated funerary objects are present.

At minimum, the human remains are more than 200 years old. They are determined to be Native American based on their provenience (King Island, AK), condition, and morphology. Archeological and oral traditional information show a relationship of shared group identity between the past and present-day residents on or from King Island. The present-day residents of King Island, AK, are represented by the King Island Native Community of Nome, AK.

Determinations Made by the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office

Officials of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and King Island Native Community.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Robert E. King, Bureau of Land Management, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov,* by June 17, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the King Island Native Community may proceed.

The U.S. Department of the Interior, Bureau of Land Management, Alaska State Office is responsible for notifying the King Island Native Community that this notice has been published.

Dated: May 10, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10649 Filed 5–17–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033923; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Little Bighorn National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Little Bighorn Battlefield National Monument at the address in this notice by June 17, 2022.

FOR FURTHER INFORMATION CONTACT: Wayne Challoner, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022, telephone (406) 638–3201, email *Wayne_Challoner@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument, Crow Agency, MT. The human remains were removed from an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Little Bighorn Battlefield National Monument.

Consultation

A detailed assessment of the human remains was made by Little Bighorn Battlefield National Monument professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma [*previously* listed as Cheyenne-Arapaho Tribes of Oklahoma]; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Arapaho Tribe of the Wind River Reservation, Wyoming [*previously* listed as Arapaho Tribe of the Wind River Reservation, Wyoming]; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe [*previously* listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location by unknown persons. On May 22, 1996, via the U.S. Postal Service, the human remains—a cranium and mandible—were sent anonymously from Longmont, CO to the South Dakota Indian Affairs Office in Pierre, SD. Attached to the human remains was a note stating, ''Att: Little Big Horn Remains.'' On May 28, 1996, the South Dakota Indian Affairs Office transferred the human remains to the South Dakota State Historical Society Archaeological Research Center (SARC), and on June 4, 1996, the human remains were transferred to Little Bighorn Battlefield National Monument. Following tribal consultation and a request for non-destructive analysis, the human remains were sent to Dr. P. Willey at California State University, Chico, CA, and subsequently were determined to be Native American. No known individual was identified. No associated funerary objects are present.

Pursuant to 43 CFR 10.10(g)(2) and 10.16, the Native American Graves Protection and Repatriation Review Committee may recommend to the Secretary of the Interior that the transfer of control of certain culturally unidentifiable human remains proceed. In February 2022, Little Bighorn Battlefield National Monument requested that the Review Committee recommend to the Secretary that the proposed transfer of control of the culturally unidentifiable Native American human remains in this notice to the Crow Tribe of Montana proceed. The Review Committee, acting pursuant to its responsibility under 25 U.S.C. 3006(c)(5), considered this request at its March 2022 meeting and recommended to the Secretary that the proposed transfer of control proceed. An April 2022 letter on behalf of the Secretary of Interior from the Designated Federal Official transmitted the Secretary's independent review and concurrence with the Review Committee that:

- Little Bighorn Battlefield National Monument consulted with every appropriate Indian Tribe or Native Hawaiian organization,
- none of The Consulted Tribes objected to the proposed transfer of control, and
- Little Bighorn Battlefield National Monument may proceed with the agreed upon transfer of control of these culturally unidentifiable human remains to the Crow Tribe of Montana.

Transfer of control is contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Determinations Made by the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument

Officials of the U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Pursuant to 43 CFR 10.11(c)(1), a ''tribal land'' or ''aboriginal land'' provenience cannot be ascertained.
- Pursuant to 43 CFR 10.10(g)(2) and 10.16, the disposition of the human

remains may be to the Crow Tribe of Montana.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Wayne Challoner, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022, telephone (406) 638–3201, email *Wayne_Challoner@nps.gov,* by June 17, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Crow Tribe of Montana may proceed.

The U.S. Department of the Interior, National Park Service, Little Bighorn Battlefield National Monument is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: May 10, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10648 Filed 5–17–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033922; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Gilcrease Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Gilcrease Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Gilcrease Museum at the address in this notice by June 17, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Bryant, Gilcrease Museum, 800 S Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Gilcrease Museum, Tulsa, OK, that meets the definition of an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 1958, one cultural item was removed from McAlester, OK. In 1958, Thomas Gilcrease acquired the item from Louie LeFlore, great-granddaughter of Chief Greenwood LeFlore, whose family had held it since the 1830 Treaty of Dancing Rabbit Creek. In 1963–1964, Gilcrease transferred his collection to the City of Tulsa, including this item. The one object of cultural patrimony is a limestone figural pipe.

This pipe was used in a traditional ceremony as a sign of peace at one of the most defining moments in Choctaw History, the signing of the Dancing Rabbit Creek Treaty. That Treaty ushered in the removal of the Choctaw people from their aboriginal land over a 70-year period. The pipe has ongoing historical importance for the creation of The Choctaw Nation in Oklahoma. While it may have been in the stewardship of one family, it is communally owned by The Choctaw Nation of Oklahoma.

Determinations Made by the Gilcrease Museum

Officials of the Gilcrease Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and The Choctaw Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Laura Bryant, Gilcrease Museum, 800 S Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu,* by June 17, 2022. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to The Choctaw Nation of Oklahoma may proceed.

The Gilcrease Museum is responsible for notifying The Choctaw Nation of Oklahoma that this notice has been published.

Dated: May 10, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10647 Filed 5–17–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033921; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Walsh Gallery, Seton Hall University, South Orange, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Walsh Gallery at Seton Hall University, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Walsh Gallery. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to

claim these cultural items should submit a written request with information in support of the claim to the Walsh Gallery at the address in this notice by June 17, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Hapke, Collections Manager, Walsh Gallery, University Libraries, Seton Hall University, 400 South Orange Avenue, South Orange, NJ 07079, telephone (973) 275–2165, email *laura.hapke@shu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Walsh Gallery, Seton Hall University, South Orange, NJ, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sometime in the 1950s, 70 cultural items were removed from Aakawaxung Munahanung (Island Protected from the Wind), an archeological site in Richmond County, NY. Staff at the Walsh Gallery believe the items were initially collected by an amateur archeologist. They were either collected by Brian Templeton or transferred to his care sometime before June of 1961. Seton Hall University purchased the unassociated funerary objects from Brian Templeton in 1961. In 2015, care of the University's archeological collection was transferred to the Walsh Gallery. The 70 unassociated funerary objects are one brass buckle, one triangular point, one side notched point, one corner notched point, one lobate point, one blank for a triangular notched point, three leaf shaped points, one shell, two jasper knives, one end scraper, one pebble chopper, one pebble hammerstone, one inner core of whelk, and 54 pottery fragments.

Determinations Made by the Walsh Gallery, Seton Hall University

Officials of the Walsh Gallery, Seton Hall University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 70 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Laura Hapke, Walsh Gallery, University Libraries, Seton Hall University, 400 South Orange Avenue, South Orange, NJ 07079, telephone (973) 275–2165, email *laura.hapke@shu.edu,* by June 17, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Tribes may proceed.

The Walsh Gallery, Seton Hall University is responsible for notifying The Tribes that this notice has been published.

Dated: May 10, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10646 Filed 5–17–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033920; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana State Museum and Historic Site Corporation, State of Indiana, Indianapolis, IN

ACTION: Notice.

SUMMARY: The Indiana State Museum and Historic Sites Corporation (ISMHS) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to ISMHS. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to ISMHS at the address in this notice by June 17, 2022.

FOR FURTHER INFORMATION CONTACT: Michele Greenan, Indiana State Museum and Historic Sites Corporation, 650 West Washington Street, Indianapolis, IN 46214, telephone (317) 473–0836, email *mgreenan@indianamuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Indiana State Museum and Historic Sites Corporation, Indianapolis, IN. The human remains were removed from Harrison County, Floyd County, and Spencer County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by ISMHS professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and the Shawnee Tribe (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In February of 1992, following a report of looting, human remains representing, at a minimum, one individual were collected by staff of the Indiana Department of Historic Preservation and Archaeology (DHPA) from an area identified as being part of

the Overflow Pond Site (12Hr12), in Harrison County, IN (DHPA accidental discovery #920001). In 2018, these human remains were re-discovered during an intensive inventory of collections housed at DHPA. The labels on the bag indicating site #12Hr12 and ''east hole'' likely reference a looter's pit. No other documentation for these human remains has been located. Following this re-discovery, DHPA research staff completed an inventory and transferred the human remains to ISMHS in May 2018. The human remains, consisting of only one bone (a prox. left 5th metatarsal), render age, sex, or possible pathology impossible. No known individual was identified. No associated funerary objects are present.

More recent work at 12Hr12 has identified it as an occupation site whose primary occupations occurred during the late Middle Archaic and Late Archaic periods (roughly 5000–1000 B.C.). The presence of extensive shell midden deposits and artifact assemblages, which include diagnostic point types and engraved bone pin fragments, point toward heavy use of the site during this time. Based on the archeological information from 12Hr12, the human remains of this individual belong within those Archaic occupations.

Archeological and historical information shows that the present-day Shawnee and their ancestral groups have a long history in Southern Indiana and the Ohio River Valley. Archeological information evidences a strong relationship between these Shawnee ancestral groups and Mississippian communities known as Fort Ancient, while historical information from the 17th through 19th centuries indicate intense Shawnee settlement along the Ohio River Valley throughout Ohio and Indiana. Based on this information, a relationship of shared group identify can be reasonably traced between the Native American group to which these human remains belonged and the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and the Shawnee Tribe (hereafter referred to as ''The Tribes'').

Sometime prior to March 24, 2012, human remains representing, at minimum, one individual were removed from an area along the Ohio River bordering Harrison and Floyd Counties, IN. On March 24, 2012, Indiana Conservation officers approached a man who was seen kneeling along the shoreline of the Ohio River. He had with him a kneeling pad, a trowel, and a duffle bag. Caesar's Riverboat Casino, who owned the land where this incident occurred, told the officers that it had not granted the man permission to dig on the land. Following further discussions, the man consented to a search of his apartment. There, the officers located small bags and boxes containing pieces of stone, bone, and antler, as well as a small wooden box containing a note that indicated human remains might be present among the bones. The case was assigned Incident Report # INV–12–00076. While the localities where the above materials were removed cannot be determined with exactitude, interviews with the suspect revealed that the provenience of the human remains is an area along the Ohio River around the Harrison County/Floyd County border.

On June 18, 2012, Indiana Conservation officers took the human remains to the University of Indianapolis for assessment and to determine ancestry. University of Indianapolis researchers determined that four of the bone fragments were indeed human, and that most likely they were Native American. One of the bone fragments is a distal right humerus and the other three comprise a single proximal right femur. The bones were identified as belonging to an adult, but no determination of sex or possible pathology could be made. No known individual was identified. No associated funerary objects are present. On December 12, 2013, the human remains were transferred to ISMHS.

On December 13, 1999, human remains representing, at minimum, one individual were removed from an area that is most likely part of the Kramer site (12Sp7) in Spencer County, IN. The human remains were collected on-site by staff from the Indiana Department of Historic Preservation and Archaeology (DHPA) and the Division of Forestry (DHPA accidental discovery #200012). In 2017–2018, these human remains were re-discovered during an intensive inventory of collections housed at DHPA. The label on the bag identified their provenience as 12SP7 and that they came from the northeast side of a ''grassy mound.'' Following their re-discovery, DHPA research staff completed an inventory of these human remains and in May of 2018, transferred them to ISMHS. Three bone fragments are present—a right humerus fragment and two clavicle fragments (right and left sides). Given the fragmentary nature of the human remains, sex and age could not be determined. No known individual was identified. No associated funerary objects are present.

Site 12SP7 is known as Kramer or Kramer Mound, a known shell-midden site—''mound'' references shell deposits—that has been subject to heavy looting in the past. Archeologically, the primary occupation of Kramer Mound spanned the later part of the Middle Archaic period through the Late/Terminal Archaic periods (roughly 5000–1000 B.C.), based on the presence of dense shell-middens combined with artifact types, including bone pins and concentrations of diagnostic points. This timeframe is further corroborated by two calibrated Carbon-14 dates of 4220 B.C. and 3760 B.C. Accordingly, the human remains from 12SP7 most likely belong to these Late-Middle Archaic through Late-Terminal Archaic occupations.

Archeological and historical information shows that the present-day Shawnee and their ancestral groups have a long history in Southern Indiana and the Ohio River Valley. Archeological information evidences a strong relationship between these Shawnee ancestral groups and Mississippian communities known as Fort Ancient, while historical information from the 17th through 19th centuries indicate intense Shawnee settlement along the Ohio River Valley throughout Ohio and Indiana. Based on this information, a relationship of shared group identify can be reasonably traced between the Native American group to which these human remains belonged and The Tribes.

Determinations Made by the Indiana State Museum and Historic Sites Corporation

Officials of the Indiana State Museum and Historic Sites Corporation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Michele Greenan, Indiana State Museum and Historic Sites Corporation, 650 West Washington Street, Indianapolis, IN 46214, telephone (317) 473–0836, email *mgreenan@indianamuseum.org,* by June 17, 2022. After that date, if no additional requestors have come forward, transfer of control of the

human remains to The Tribes may proceed.

The Indiana State Museum and History Sites Corporation is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: May 10, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–10645 Filed 5–17–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1237]

Certain Cloud-Connected Wood-Pellet Grills and Components Thereof; Notice of a Commission Determination To Issue a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission, having previously found a violation of section 337, has determined to issue a limited exclusion order (''LEO'') directed against infringing cloud-connected wood-pellet grills and components thereof imported by or on behalf of respondent GMG Products LLC (''GMG'') of Lakeside, Oregon and a cease and desist order (''CDO'') directed against GMG. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2021, based on a complaint filed on behalf of Traeger Pellet Grills LLC (''Traeger'') of Salt Lake City, Utah. 86 FR 129–30 (Jan. 4, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cloud-connected wood-pellet grills and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,218,833 (''the '833 patent'') and 10,158,720 (''the '720 patent''). The Commission's notice of investigation named GMG as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation.

The Commission previously found that Traeger has satisfied the economic prong of the domestic industry requirement with respect to the '833 and '720 patents. *See* Order No. 26 (Aug. 10, 2021), *unreviewed by* Comm'n Notice (Sept. 9, 2021).

On September 3, 2021, the former chief administrative law judge (''CALJ'') issued an initial determination (''ID'') (Order No. 28) granting in part GMG's motion for summary determination of non-infringement as to the '833 patent and terminating that patent from the investigation. *See* Order No. 28 (Sept. 3, 2021). On October 6, 2021, the Commission determined to review Order 28. Comm'n Notice (Oct. 6, 2021). On October 28, 2021, the Commission determined, on review, to affirm with modification the ID's finding of non-infringement as to the '833 patent. *See* Comm'n Notice (Oct. 28, 2021). Accordingly, the '833 patent was terminated from the investigation.

On December 6, 2021, the former CALJ issued a final ID finding a violation of section 337 based on infringement (*i.e.,* direct, contributory, and induced) of asserted claims 1 and 2 of the '720 patent. The ID further finds that: (1) Traeger has satisfied the technical prong of the domestic industry requirement; (2) GMG is estopped from challenging the validity of the '720 patent based on the prior art MAK and Fireboard systems; (3) the prior art MAK and Fireboard systems do not render the asserted claims of the '720 patent invalid due to anticipation under 35 U.S.C. 102(a) or obviousness under 35 U.S.C. 103; and (4) the '720 patent is not unenforceable due to inequitable conduct. The former CALJ recommended, should the Commission find a violation, the issuance of an LEO directed to GMG's infringing products and a CDO directed to GMG, and requiring a bond in the amount of 53.1 percent of the entered value for importation of infringing articles during the period of Presidential review.

On December 20, 2021, GMG petitioned for review of certain aspects of the final ID. Specifically, GMG petitioned for review of the ID's findings regarding claim construction, infringement, the technical prong of the domestic industry requirement, validity, and enforceability with respect to the '720 patent. On December 28, 2021, Traeger filed a response in opposition to GMG's petition for review.

The Commission received no submissions from the public in response to its **Federal Register** notice requesting comments on the public interest should the Commission find a violation of section 337. 86 FR 70860–61 (Dec. 13, 2021). Traeger and GMG did not submit any public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

On March 8, 2022, the Commission determined not to review the final ID's finding of a violation of section 337 with respect to claims 1 and 2 of the '720 patent, thus adopting that finding. *See* Comm'n Notice (Mar. 8, 2022); 87 FR 14288–89 (Mar. 14, 2022); *see* 19 CFR 210.42(h)(2). The Commission also requested written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding. *Id.*

On March 22, 2022, Traeger and GMG each filed a brief on remedy, the public interest, and bonding. On March 29, 2022, the parties filed their reply briefs. The Commission received no other submissions.

Having reviewed the record in this investigation, including the parties' briefing, the Commission has determined that the appropriate form of relief is an LEO prohibiting the entry of unlicensed cloud-connected wood-pellet grills and components thereof that infringe one or more of claims 1 and 2 of the '720 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, GMG or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns (collectively, ''the covered articles''). The Commission has also determined to issue a CDO prohibiting GMG from conducting, or aiding and abetting, any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for cloud-connected wood-pellet grills and components thereof that infringe one or more of claims 1–2 of the '720 patent.

The Commission has further determined that the public interest

factors enumerated in sections 337(d)(1) and 337(f)(1) (19 U.S.C. 1337(d)(1) and 1337(f)(1)) do not warrant denying relief. Finally, the Commission has determined that a bond in the amount of 53.1 percent of the entered value of the covered articles is required during the period of Presidential review pursuant to 19 U.S.C. 1337(j). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission issues its opinion herewith setting forth its determinations on the remedy, bonding and public interest issues. The investigation is terminated.

The Commission vote for this determination took place on May 12, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 12, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10632 Filed 5–17–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–249 and 731–TA–262–263 and 265 (Fifth Review)]

Iron Construction Castings From Brazil, Canada, and China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to pertinent industries in the United States within a reasonably foreseeable time.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted these reviews on December 1, 2021 (86 FR 68283) and determined on March 7, 2022, that it would conduct expedited reviews (87 FR 21136, April 11, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on May 13, 2022. The views of the Commission are contained in USITC Publication 5324 (May 2022), entitled *Iron Construction Castings from Brazil, Canada, and China: Investigation Nos. 701–TA–249 and 731–TA–262–263 and 265 (Fifth Review).*

By order of the Commission.

Issued: May 13, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10694 Filed 5–17–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Laptops, Desktops, Mobile Phones, Tablets, and Components Thereof, DN 3621;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sonrai Memory Ltd. on May 11, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laptops, desktops, mobile phones, tablets, and components thereof. The complainant names as respondents: Amazon.com, Inc. of Seattle, WA; Dell Technologies Inc. of Round Rock, TX; EMC Corporation of Round Rock, TX; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Motorola Mobility LLC of Chicago, IL; LG Electronics Inc. of Korea; LG Electronics USA, Inc. of Englewood, Cliffs, NJ; Samsung Electronics Co., Ltd. of Korea; and Samsung Electronics America, Inc. of Ridgefield Park, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondent, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third

party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3621'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 22, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10607 Filed 5–17–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140z—NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Personal Identity Verification—ATF Form 8620.40

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit 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: Comments are encouraged and will be accepted for an additional 30 days until June 17, 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *The Title of the Form/Collection:* Personal Identity Verification.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 8620.40.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The Personal Identity Verification—ATF Form 8620.40 will be used to document identifying and citizenship information of a candidate for employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 2,000 respondents will provide information to complete this form once annually, and it will take approximately 5 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * .833333 (5 minutes or the time taken to prepare each response).

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, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: May 13, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–10655 Filed 5–17–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 19–31]

Eric David Thomas, M.D.; Denial of Application

I. Introduction

On March 25, 2020, a former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Eric David Thomas, M.D., (hereinafter, Applicant) of Helena, Montana. OSC, at 1. The OSC proposed the denial of Applicant's DEA registration application No. W18015986C and ''any other application(s) for a DEA registration'' on the grounds that he ''materially falsified'' that application ''in violation of 21 U.S.C. 824(a)(1),'' and ''also pursuant to 21 U.S.C. 824(a)(4) and 823(f),'' alleging that his being registered ''would be inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f) for violations of applicable Federal Law.'' *Id.*

The substantive grounds for the proceeding, as more specifically alleged in the OSC, are, first, that Applicant's DEA registration application No. W18015986C ''does not set forth that . . . [he] previously surrendered . . . [his registration] No. FT2321797 for cause'' even though he was ''aware of that fact, as evidenced by . . . [his] agreement to surrender . . . [it] by signing and dating a Form DEA–104 on or about May 20, 2015.'' *Id.* at 5. The second substantive ground alleged in the OSC is that, although he did not have authority from DEA or New Jersey, Applicant issued at least eleven controlled substance prescriptions between about June 2, 2015, and August 17, 2015. *Id.* at 5–7 (citing 21 U.S.C. 822(a)(2), 841(a)(1), 843(a)(2), 802(10) and 21 CFR 1306.03(a)(2)). The third substantive ground alleged in the OSC is lack of candor based on Applicant's alleged provision of ''false or misleading statements'' and alleged ''fail[ure] to answer questions candidly'' in ''multiple conversations and interviews with DEA personnel,'' and the submission of another, subsequently withdrawn, ''falsified'' registration application (No. W16055629C) to DEA. *Id.* at 7–10 (citing prior Agency decisions and 21 U.S.C. 824(a)(1)).

The OSC notified Applicant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 10–11 (citing 21 CFR 1301.43). The OSC also notified Applicant of the opportunity to file a corrective action plan (hereinafter, CAP). *Id.* at 11–12 (citing 21 U.S.C. 824(c)(2)(C)).

Applicant requested a hearing. Request for Hearing for ''Eric Robert Thomas, MD,'' dated March 30, 2020; *see also* Order for Prehearing Statements dated March 31, 2020, at 1 (regarding ''Eric Thomas, M.D.''). The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Administrative Law Judge (hereinafter, ALJ) Mark M. Dowd. The hearing took place by video teleconference from the DEA Hearing Facility in Arlington, Virginia from June 15, 2020 through June 17, 2020. *See* Transcript (hereinafter, Tr.) 4.

The ALJ's Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, RD) is dated September 29, 2020. The RD notes thirty-eight stipulations agreed upon by the parties and includes them in its found facts. RD, at 91–96; *infra,* section II.A. The RD finds that Applicant materially falsified his DEA registration application, prescribed controlled substances without an active DEA registration on eleven occasions, and exhibited a lack of candor during DEA's investigation and during the proceeding, thus concluding that it would be inconsistent with the public interest for me to grant Applicant's pending DEA registration application.[1] RD, at 138–42 (citing 21 U.S.C. 823).

Applicant filed exceptions to the RD. [Applicant's] Exceptions to Decision of September 29, 2020 dated October 19, 2020 (hereinafter, Appl Exceptions). The Government sought, and eventually received, leave to respond to Appl Exceptions. Government's Responses to [Applicant's] Exceptions to Recommended Decision, Findings of Fact, and Conclusions of Law dated October 29, 2020 (hereinafter, Govt Exceptions).

Having considered the record in its entirety, I conclude that the Government failed to establish by clear, unequivocal, and convincing evidence that Applicant violated 21 U.S.C. 824(a)(1). I further conclude that there is uncontroverted, substantial record evidence, including Applicant's admission, that Applicant issued eleven controlled substance prescriptions when he had neither federal nor state authority to do so. I also conclude that the record evidence about whether Applicant exhibited candor in his interactions with the Agency and Agency investigators is not conclusive and, accordingly, that the record does not include substantial evidence of Applicant's OSC-alleged lack of candor.

I conclude, based on the entire record before me, that Applicant did not unequivocally accept responsibility for the egregious violations of prescribing controlled substances eleven times when he lacked federal and state authority to do so. Accordingly, based on the entire record before me, I decline to entrust Applicant with a DEA registration at this time and I deny DEA registration application No. W18015986C.

I set out the parties' stipulations of fact, adopting them as the ALJ recommended, and I make additional findings.

II. Findings of Fact

A. Stipulations of Fact

As already discussed, the parties agreed to thirty-eight stipulations of fact. The ALJ recommended that they be accepted as fact. I agree and I adopt as fact the parties' thirty-eight stipulations of fact, copied verbatim below. RD, at 91.

1. [Applicant] was licensed in the State of New Jersey, Medical License No. 25MA08851700.

2. [Applicant's] New Jersey medical license, License No. 25MA08851700,

[1] The RD proposes, if I were considering granting Applicant's application, that I limit Applicant's authority to Schedule V. RD, at 142 n.35.

was temporarily suspended by the State of New Jersey, State Board of Medical Examiners, and the Order so doing took effect on December 4, 2015. Order of Temporary Licensure Suspension, *In the Matter of Eric Thomas, M.D. License No. 25MA08851700,* State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (filed Nov. 25, 2015; effective date Dec. 4, 2015).[2]

3. [Applicant] entered into a final consent order in the state board case involving his New Jersey medical license, License No. 25MA08851700, that was issued, on or about, February 22, 2018. Consent Order, *In the Matter of the Suspension or Revocation of the License of Eric Thomas, M.D. License No. 25MA08851700,* State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (filed Feb. 22, 2018).[3] Pursuant to the Order, [Applicant] agreed ''to retire his license to practice medicine and surgery in the State of New Jersey, with such retirement to be deemed a permanent suspension.'' *Id.* at 2.

4. [Applicant] previously had a Controlled Dangerous Substance (''CDS'') registration in the State of New Jersey, Registration No. DO9767000. On or about May 20, 2015, [Applicant] signed a Consent Order that temporarily suspended his New Jersey CDS registration. Consent Order of Temporary Suspension of NJ CDS Registration, *In the Matter of the Temporary Suspension of the NJ CDS Registration of Eric Thomas, M.D.,* State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs (filed May 21, 2015). Pursuant to the final consent order entered the [sic] in the state board case involving [Applicant's]'s New Jersey medical license, License No. 25MA08851700, [Applicant's]'s New Jersey CDS registration also was surrendered. Consent Order, *In the Matter of the Suspension or Revocation of the License of Eric Thomas, M.D. License No. 25MA08851700,* State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (filed Feb. 22, 2018) at 2.[4]

5. [Applicant] was issued a medical license, License No. MED–PHYS–LIC–49958, by the State of Montana, on or about, June 20, 2016. The License was issued under his name and the business name of Medical Associates of Montana.

6. [Applicant] was registered with DEA as a practitioner authorized to handle controlled substances in Schedules II–V under DEA COR number FT2321797 at 44 Ridge Road, North Arlington, NJ 07031.[5] On or about May 20, 2015, [Applicant] voluntarily surrendered COR FT2321797 by submitting a Form DEA–104 that he signed and dated.

7. On or about June 22, 2016, [Applicant] submitted an application for a DEA COR to handle controlled substances in Schedules II–V, with Application No. W16055629C, at 1001 South Main Street, Suite 49, Kalispell, MT 59901.[6] [Applicant] withdrew this application, on or about, January 24, 2018.

8. For Application No. W16055629C, [Applicant] answered ''Y'' or ''Yes'' for liability question 3. [Applicant] also provided the following information for question 3:

Incident Nature[:] THERE WAS CONCERN THAT DURING THE COURSE OF DR. THOMAS' SEEING, EXAMINING AND TREATING VARIOUS PATIENTS WITH VARIED MEDICAL PROBLEMS, THERE MAY HAVE BEEN A VERY FEW PATIENTS' MISUSE OF PRESCRIPTIONS PROVIDED FOR THEIR ALLEGED PAIN CONTROL. NONE OF THIS MISUSE WAS ANTICIPATED IN ANY WAY BY ME IN MY ADMINISTRATION OF PROVIDING PROPER HEALTH CARE TREATMENT TO MY PATIENTS.

Incident Result[:] IN CONSIDERATION OF THIS PENDING ACCUSATION, I VOLUNTARILY SUSPENDED MY DEA LICENSE 13 MONTHS AGO IN GOOD FAITH IN ORDER TO RESPECT THE ACCUSATIONS THAT HAD BEEN MADE. DESPITE MY BEST EFFORTS TO PROVIDE APPROPRIATE HEALTH CARE AND TREATMENT, THESE ACCUSATIONS BY THE NJ MEDICAL BOARD RESULTED IN THE TEMPORARY SUSPENSION OF MY MEDICAL LICENSE PENDING THE CONSIDERATION STILL TO BE MADE BY A PROPER AND MORE APPROPRIATE, YET STILL UNSCHEDULED, ''PLENARY HEARING''.

9. On or about February 21, 2018, [Applicant] submitted an application for a DEA COR to handle controlled substances in Schedules II–V, with Application No. W18015986C, at 2620 Colonial Drive, Helena, MT 59602.[7] This application is currently pending, and is the subject of this Order.

10. For Application No. W18015986C, [Applicant] answered ''Y'' or ''Yes'' for liability question 2. [Applicant] also provided the following information for question 2:

Incident Nature[:] THERE WAS CONCERN BY THE CONTROLLED DRUG DIVISION (CDS) THAT THERE WAS INAPPROPRIATE PRESCRIBING OF CONTROLLED SUBSTANCES BY DR. THOMAS FROM HIS MEDICAL OFFICE. OF THE 1,000 CHARTS OF [sic] DR. THOMAS HAD, SIX MEDICAL RECORDS WERE REQUESTED FOR REVIEW BY THE DEPUTY ATTORNEY GENERAL. AT THIS TIME, DR. THOMAS COMPLIED WITH ALL REQUESTS AND VOLUNTARILY SURRENDERED HIS CDS REGISTRATION PRIVILEGES WHILE THE CHART INSPECTION WAS BEING CONDUCTED.

Incident Result[:] THE NJ MED BOARD HELD A HEARING WHERE THE CHARTS OF DR THOMAS WERE INCOMPLETELY COPIED AND GIVEN TO ANOTHER DR WHO INCORRECTLY CONCLUDED THAT DR THOMAS DIND'T [sic] PROVIDE GOOD MEDICAL CARE WHILE PRESCRIBING CDS MEDS. DR THOMAS AND LAWYER CONTACTED ANOTHER MEDICAL DR—TRIPLE BOARD CERTIFIED—WHO REVIEWED THE ENTIRE CHARTS AND CONCLUDED MEDICAL CARE GIVEN BY DR THOMAS MET OR EXCEEDED STANDARD PRACTICES. A CONSENT ORDER WAS THEN AGREED UPON W/ DR THOMAS DENYING ANY WRONG DOING, NO CIVIL PENALTY MADE.

11. On or about December 4, 2018, [Applicant] submitted an application for a DEA COR to handle controlled substances in Schedule V, with Application No. W18128011C, at 400 Conley Lake Road, Deer Lodge, MT 59722–8708.[8] [Applicant] withdrew this application on or about March 15, 2019.

12. [Applicant] has not had a DEA Registration to handle controlled substances since he surrendered COR No. FT2321797 for cause, on or about, May 20, 2015.

13. On or about June 2, 2015, [Applicant] issued to a patient with the initials T.P. a controlled substance prescription for Sonata 10 mg capsules (20 count).[9]

[2] This document is Government Exhibit (hereinafter, GX) 3, admitted without objection. Tr. 86–88.

[3] This document is GX 4, admitted without objection. Tr. 88–89.

[4] This document is GX 2, admitted without objection. Tr. 36–38.

[5] This document is GX 1a, admitted without objection. Tr. 98–99.

[6] This document is GX 1b, admitted without objection. Tr. 94–95.

[7] This document is GX 1c, admitted without objection. Tr. 96–97.

[8] This document is GX 1d, admitted without objection. Tr. 97–98.

[9] The controlled substance prescriptions referenced in Stipulations 13 through 23 are

Continued

14. On or about June 2, 2015, [Applicant] issued to a patient with the initials A.G. a controlled substance prescription for Sonata 10 mg capsules (30 count).

15. On or about June 2, 2015, [Applicant] issued to a patient with the initials M.M. a controlled substance prescription for Sonata 10 mg capsules (30 count).

16. On or about June 2, 2015, [Applicant] issued to a patient with the initials E.G. a controlled substance prescription for Sonata 10 mg capsules (30 count).

17. On or about June 2, 2015, [Applicant] issued to a patient with the initials R.B. a controlled substance prescription for Sonata 10 mg capsules (30 count).

18. On or about June 12, 2015, [Applicant] issued to a patient with the initials M.W. a controlled substance for Qsymia 7.5–46 mg capsules (30 count).

19. On or about June 22, 2015, [Applicant] issued to a patient with the initials J.E. a controlled substance prescription for Lomotil 2.5–0.025 mg tablets (60 count).

20. On or about July 22, 2015, [Applicant] issued to a patient with the initials M.G. a controlled substance prescription for Lomotil 2.5–0.025 mg tablets (40 count).

21. On or about July 27, 2015, [Applicant] issued to a patient with the initials DC a controlled substance prescription for Belviq 10 mg tablets (30 count).

22. On or about August 13, 2015, [Applicant] issued to a patient with the initials M.C. a controlled substance prescription for phenobarbital 64.8 mg tablets (30 count).

23. On or about August 17, 2015, [Applicant] issued to a patient with the initials H.G. a controlled substance prescription for Restoril 22.5 mg tablets (30 count).

24. Sonata is the brand name for zaleplon, a Schedule IV controlled substance that is often used to treat insomnia.

25. Qsymia contains phentermine and topiramate, and is a Schedule IV controlled substance that is often used to treat obesity.

26. Lomotil is the brand name for diphenoxylate-atropine, a Schedule V controlled substance that often is used to treat irritable bowel syndrome and diarrhea.

27. Belviq is the brand name for lorcaserin, a Schedule IV controlled substance that often is used to treat obesity.

28. Phenobarbital is a Schedule IV controlled substance that often is used to treat certain types of epilepsy.

29. Restoril is the brand name for temazepam, a Schedule IV controlled substance that often is used to treat insomnia.

30. On or about July 26, 2018, [Applicant] participated in a face-to-face interview with DEA personnel.

31. On or about September 28, 2018, [Applicant] participated in a telephonic call with DEA personnel.

32. On or about October 3, 2018, [Applicant] participated in a telephonic call with DEA personnel. [Applicant] participated in a follow-up call with DEA personnel the following day, on or about, October 4, 2018.

33. On or about March 25, 2019, [Applicant] participated in a telephonic call with DEA personnel.

34. On or about April 9, 2019, [Applicant] participated in a face-to-face interview with DEA personnel. [Applicant] provided a handwriting exemplar to DEA personnel during this interview.

35. On or about April 26, 2019, [Applicant] participated in a telephonic call with DEA personnel.

36. Government Exhibit 2 is a true and correct copy of Consent Order of Temporary Suspension of NJ CDS registration, *In the Matter of the Temporary Suspension of the NJ CDS Registration of Eric Thomas, M.D.,* State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs (May 21, 2015).

37. Government Exhibit 3 is a true and correct copy of Order of Temporary Licensure Suspension, *In the mater of Eric Thomas, M.D. License No. 25MA08851700,* State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (filed Nov. 25, 2015; effective date Dec. 4, 2015).

38. Government Exhibit 4 is a true and correct copy of Consent Order, *In the Matter of the Suspension or Revocation of the License of Eric Thomas, M.D. License No. 25MA08851700,* State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (filed Feb. 22, 2018).

B. The Investigation of Applicant

According to the Government's first witness, a Diversion Investigator (hereinafter, NJ DI) assigned to the New York Division Office whose DEA work is primarily in New Jersey, he received a telephone call from his New Jersey Enforcement Bureau investigator counterparts on May 20, 2015. Tr. 55–56, 33. NJ DI testified that his counterparts told him they were ''in the process of temporarily suspending . . . [Applicant's New Jersey Controlled Dangerous Substances (hereinafter, CDS)] registration, and they asked if we could come out to obtain his DEA registration.'' [10] *Id.* at 33–34; *see also* GX 2 (New Jersey Division of Consumer Affairs Consent Order of Temporary Suspension of N[ew] J[ersey] CDS Registration dated May 20, 2015), at 1 (''This matter was opened . . . upon receipt of information that . . . [Applicant] was engaged in the prescribing of . . . [CDS] in the usual course of professional practice, without *some ET 5/20/15* legitimate medical purpose in violation of N.J.A.C. 13:45H–7.4.''), GX 2, at 2 (''Through the course of the investigation, it was determined that . . . [Applicant] had been prescribing CDS without *some ET 5/20/15* legitimate medical purpose, notably highly addictive narcotics, to his patients and had knowingly prescribed CDS to known drug addicts, known felons and patients testing positive for Suboxone and illegal street drugs.'').[11] NJ DI testified that ''typically when . . . [a New Jersey] administrative action occurs, in this case the suspension of a registration, we're contacted so that way we can follow suit . . . and make sure there is clarity for the person in question so that way they don't view it as having one license that's active and one that's not.'' Tr. 41. NJ DI testified that this notification process occurs ''basically to protect the registrant holder.'' *Id.* NJ DI elaborated by stating that, ''[b]ecause . . . [Applicant] was suspending his CDS registration, he was no longer going to be in good standing with the DEA'' and ''as a result, we were seeking a surrender of his DEA registration at that time.'' *Id.; see also id.* at 46–47, 54–55.

NJ DI's testimony described his encounter with Applicant on May 20, 2015. NJ DI testified that, since he ''was in the office when . . . [he] received the phone call from the state investigators,'' he ''had the time to put in the information to make . . . [a typed Form DEA–104 Voluntary Surrender of Controlled Substances Privileges form] more legible.'' *Id.* at 47–48. He testified that he, not Applicant, checked the first box on the Form DEA–104, the one that states ''[i]n view of my alleged failure to comply with the Federal requirements

compiled in GX 8. Tr. 130–32. GX 8 was admitted without objection. *Id.* at 132.

[10] NJ DI testified that a New Jersey CDS registration ''allows the doctor to prescribe specifically controlled substances whereas the medical license allows them to actually practice medicine overall.'' Tr. 35.

[11] The italicized material in these two quotes is handwritten above the noted text of GX 2.

pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part.'' *Id.* at 44; GX 5, at 1. NJ DI and another DI traveled to Applicant's office after Applicant ''had already signed the [Temporary New Jersey CDS Registration Suspension] Order'' and ''asked him to surrender his DEA registration, and presented a DEA Form[-]104.'' Tr. 42; *see also* GX 5 (Signed Form DEA–104 (Voluntary Surrender of Controlled Substances Privileges) dated May 20, 2015), at 1; Tr. 65, 73.

NJ DI testified that the two DIs met with Applicant, ''explained who we were and explained the purpose of us being there, . . . that we were there seeking a surrender of his DEA registration because . . . he no longer possessed a CDS registration . . . in good standing, and as a result, the DEA was no longer going to be valid.'' Tr. 43. NJ DI testified that he read the Form DEA–104 to Applicant ''so that way he knew what he was signing'' because he ''no longer had a CDS registration in good standing.'' *Id.* NJ DI testified that Applicant signed the DEA-completed Form DEA–104 and dated it May 20, 2015. *Id.* at 44–45. NJ DI testified that obtaining the voluntary surrender form from Applicant was the ''final action for us'' and that neither he nor anyone else at the New Jersey office of whom he is aware conducted any subsequent investigation of Applicant. *Id.* at 65–66.

Regarding NJ DI's credibility, I agree with the RD, and I find that NJ DI's testimony is fully credible. RD, at 110. I shall fully credit it. Tr. 29–76. Accordingly, I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant surrendered his DEA registration (No. FT2321797) and signed a DEA-completed Form DEA–104 on May 20, 2015. *See also supra,* section II.A., *infra,* section II.D.

NJ DI's testimony relates to action by the New Jersey State Board of Medical Examiners (hereinafter, NJMB) concerning Applicant's New Jersey medical license and CDS registration. *Supra,* section II.A. According to GX 4, the final Consent Order between Applicant and the NJMB filed on February 22, 2018, Applicant agreed to retire his medical license and surrender his CDS registration, and he agreed ''not to reapply for a New Jersey medical license or to seek a CDS registration in the State of New Jersey in the future.'' GX 4, at 2–4. According to this Consent Order, after a hearing on the application for the temporary suspension of Applicant's medical license and the ''consideration of all evidence and testimony presented,'' the NJMB ''found'' that Applicant's ''continued practice of medicine presented a clear and imminent danger to the public health[,] safety, and welfare, and therefore temporarily suspended his license to practice medicine.'' *Id.* at 1–2. The Consent Order also states that Applicant ''agrees to the terms of this Consent Order as a settlement of a disputed matter'' and ''denies any and all wrongdoing.'' *Id.* at 2. Accordingly, I find uncontroverted record evidence that Applicant denied ''any and all wrongdoing'' about which the NJMB found his ''continued practice of medicine . . . [to present] a clear and imminent danger to the public health'' and about which he agreed never again to apply to practice medicine in New Jersey.

C. The Government's Case

In addition to NJ DI's testimony, the Government offered the testimonies of another DI and a Group Supervisor, and successfully moved thirteen exhibits into the record.[12] The Government also called, obtained the testimony of, and cross-examined Applicant.

The Government's second DI witness testified that she is assigned to DEA's office in Billings, Montana (hereinafter, MT DI) and that she is the lead investigator on DEA registration application No. W18015986C, the registration application that is the subject of the OSC.[13] Tr. 79, 81; *see also id.* at 93–102. MT DI testified that Liability questions are part of the DEA registration application. *Id.* at 82; *see also id.* at 102. Her testimony described these Liability questions as asking applicants about state and federal license ''trouble,'' such as revocation, suspension, and denial, and about ''any legal troubles with controlled substances . . . of some sort.'' *Id.* at 82, 103–105. MT DI testified that affirmative responses to a Liability question prompt a DEA investigation, and that the failure of an applicant to submit an affirmative response when the true response to the question is in the affirmative ''could . . . [mean that the application is] inadvertently approved.'' *Id.* at 82, 103, 105–06. MT DI testified that it is important for DEA registration applicants to complete the Liability question narratives directly, truthfully, and honestly because it is their ''chance to basically tell what happened . . . so that we can trust that . . . [they are] telling the truth.'' *Id.* at 105.

MT DI testified that Applicant truthfully answered Liability questions 2 and 3 in the affirmative on the DEA registration application about which the OSC was issued. *Id.* at 107; GX 1c, at 1, 3. She also testified, however, that Applicant's narrative response to Liability question 2 is not accurate, is false, and exhibits a lack of candor to DEA. Tr. 109, 118. Regarding this Liability question, MT DI specifically testified that Applicant's narrative response is not accurate because the Liability question is about a federal controlled substance registration but Applicant's narrative response does not ''mention anything federal in any of the narrative whatsoever,'' including that Applicant surrendered his DEA registration.[14] *Id.* at 109. MT DI testified that this failure of Applicant's narrative response for Liability question 2 ''actually [to] give any of the details of him surrendering that federal DEA number'' is ''not full disclosure of everything that has happened'' and, therefore, is a lack of candor.[15] *Id.* at 119.

By querying New Jersey's Prescription Drug Monitoring Program, MT DI testified, she identified eleven controlled substance prescriptions that Applicant issued when he had neither

[12] Three of the Government's Exhibits, GX 1, GX 12, and GX 13, have subparts.

[13] MT DI testified about her investigation of Applicant's pending DEA registration application. Among other things, she testified that she ascertained from the Montana Department of Labor and Industry website that Applicant has a Montana medical license. Tr. 83; GX 6. GX 6 was admitted without objection. Tr. 83–85.

[14] MT DI testified that Applicant was aware that he surrendered his DEA registration because NJ DI gave him a copy of the Form DEA–104 (Voluntary Surrender of Controlled Substances Privileges) that he signed. Tr. 112–13. She also testified that Applicant was aware that he surrendered his DEA registration because, on a DEA registration application that Applicant had previously submitted and then withdrawn, he ''mentions in there that he surrendered his DEA.'' Tr. 110; GX 1b, at 3. This shows, MT DI testified, that Applicant was aware that he surrendered his DEA registration. Tr. 110. According to GX 1b, however, Applicant's narrative statement for the second liability question does not state that he ''surrendered'' his DEA ''registration.'' Instead, it states that he ''voluntarily suspended'' his ''DEA license.'' GX 1b, at 1. According to MT DI's testimony, she understands Applicant's narrative statement to be referencing the ''surrender'' of his DEA ''registration.'' Tr. 111–12. She also testified that his having disclosed his surrender of his DEA registration on a previous, subsequently withdrawn application is not sufficient to make his pending DEA registration application accurate because Applicant had withdrawn that application and because ''every time you apply you have to give the details in every application.'' *Id.* at 116.

[15] Similarly, MT DI testified that Applicant falsified his narrative response to the affirmatively answered third liability question of a previously submitted, then withdrawn, DEA registration application, and also exhibited a lack of candor, because he failed to mention the suspension of his New Jersey CDS registration. Tr. 120–21; GX 1b.

a New Jersey CDS nor a DEA registration. *Id.* at 122–30; GX 7. MT DI testified that she ''cross-checked'' the dates on these controlled substance prescriptions with the date Applicant surrendered his DEA registration and determined that Applicant had handwritten and signed the eleven controlled substance prescriptions after he had surrendered his DEA registration. Tr. 130. MT DI testified that she obtained copies of the eleven controlled substance prescriptions by issuing administrative subpoenas to the pharmacies that filled them.[16] *Id.* at 130–32; GX 8. After Applicant looked at the eleven controlled substance prescriptions, MT DI testified, he checked his records and concluded that he had, indeed, issued them. Tr. 199. According to MT DI's testimony, Applicant would not withdraw his pending application in the face of this evidence, and stated that they were not ''that big of a deal because they were lower level drugs.'' *Id.* at 151, 199.

MT DI testified that Applicant's interactions with her, in telephone conversations and in-person meetings, included statements that evidence Applicant's lack of candor. *Id.* at 118. MT DI testified that candor involves full, honest disclosure of everything that happened. *Id.* at 118–19. She testified that Applicant's denials of having written controlled substance prescriptions after he surrendered his DEA registration demonstrate a lack of candor. *Id.* at 141–46, 149–51. MT DI testified that there are discrepancies between NJMB documents and Applicant's representations. *Id.* at 153–54. She testified that Applicant did not answer her questions about why he did not enter into controlled substance agreements with five individuals for whom he prescribed opiates on a long-term basis, thus exhibiting a lack of candor. *Id.* at 157–59.

MT DI also testified that Applicant did not answer her questions related to his urine drug screen practices. *Id.* at 160. More specifically, MT DI testified that she asked Applicant why he continued to prescribe opiates to those whose urinalyses tested positive for heroin and cocaine, or for those whose urinalyses did not test positive for opiates he had prescribed for them, but that he did not give her an answer. *Id.* 160–62. In addition, MT DI testified that she asked Applicant about a specific individual, L.K., and why Applicant prescribed oxycodone for her without recording any basis for the prescription, why he continued to prescribe controlled substances for her even though she ''consistently failed to provide requested urine drug screens,'' and why his first oxycodone prescription for her did not document why it was for double the dosage that her previous physician prescribed for her. *Id.* at 162–70. MT DI testified that she did not always tell Applicant that his answers to her questions were not sufficient. *Id.* at 201–05. She also acknowledged on cross-examination that, had she given Applicant this feedback, he would have been able to amend his DEA registration application. *Id.* at 208.

Regarding MT DI's credibility, I agree with the RD, and I find that MT DI's testimony is credible. RD, at 110. I shall afford it considerable weight. Tr. 78–209.

Accordingly, I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant truthfully answered Liability questions 2 and 3 in the affirmative on DEA registration application No. W18015986C, the application about which the OSC was issued. *Id.* at 107; GX 1c, at 1, 3; *see also infra,* section II.D. Further, I find substantial record evidence that Applicant handwrote and signed the eleven controlled substance prescriptions in GX 8 after he had surrendered his DEA registration. Tr. 130, 199; *see also infra,* section II.D.

The Government's third witness testified that, during the times relevant to this adjudication, she was assigned to DEA's office in Salt Lake City, Utah and was a diversion Group Supervisor (hereinafter, GS). Tr. 240. She assigned MT DI to investigate Applicant's DEA registration application because that application responded affirmatively to a Liability question and ''[a]ll DEA applications that have yes to a liability question must be looked at more thoroughly before approving, or disapproving, or going forward with the order to show cause process.'' *Id.* at 247–48.

The testimony of GS corroborated the testimony of MT DI concerning their interactions with Applicant and their assessments of his candor during those interactions.[17] *Supra.* GS also corroborated the testimony of MT DI that Applicant initially denied issuing controlled substance prescriptions after he surrendered his DEA registration, pointing out that ''he was pretty firm or adamant that he had not done that'' and ''[u]nlike the other questions, he answered this one pretty quickly.'' Tr. 266. She also testified about the April 9, 2019 meeting in Salt Lake City with Applicant during which she obtained a handwriting exemplar from Applicant and at which she showed Applicant the eleven prescriptions MT DI obtained by administrative subpoena.[18] *Id.* at 267–77. GS testified that Applicant ''really didn't say much'' when she showed him the prescriptions. *Id.* at 272. She testified that Applicant ''did not acknowledge if they were his writing or not, or if they were his patients or not,'' and, ''once he was flipping through them, there was one prescription in there where it was an . . . exclamation of, 'That's why we're here, because of Lomotil?' '' *Id.* She testified that his statement ''told'' her that ''these were true and accurate prescriptions that he wrote because he did not deny at the time it was his writing, but Lomotil is a very low schedule controlled substance.'' *Id.* She also testified that, from ''that kind of exclamation,'' it seemed to her ''he was frustrated that all of this time trying to get a DEA registration boiled down to writing a prescription after his DEA was surrendered . . . [for] such a low-level drug.'' *Id.; see, e.g.,* GX 8, at 7, 8. GS testified that Applicant took notes on the prescriptions and said that ''he would like to check his records and his calendar to see what may have been going on that day.'' Tr. 275. According to the testimony of GS, Applicant did not ''show any remorse'' or ''apologize'' for issuing the prescriptions after he surrendered his DEA registration. *Id.* at 276. She testified that, ''because of the inconsistencies still after all of this time and the new revelation of prescribing controlled substances after the surrender,'' the decision was made to go forward with ''show cause proceedings to deny the application.'' *Id.* She also testified that, given the substance of the New Jersey proceedings and his having written controlled substance prescriptions after he surrendered his DEA registration, an OSC would have been issued about his DEA registration application. *Id.* at 278–79.

Regarding the credibility of GS, I agree with the RD and I find that the testimony of GS is credible. RD, at 111. I shall afford it considerable weight. Tr. 238–314, 690–705.

The Government called Applicant to the stand and, through direct

[16] The controlled substances that Applicant prescribed in the eleven prescriptions are Sonata (Schedule IV), Qsymia (Schedule IV), Lomotil (Schedule V), Belviq (Schedule IV), phenobarbital (schedule IV), and Restoril (Schedule IV). GX 8; Stipulations 13–29.

[17] The testimony of GS specifically addressed Applicant's candor during the investigators' questioning of him about his inconsistent use of written controlled substance agreements, the role of urinalysis in his controlled substance prescribing, and his treatment of L.K. Tr. 251–65.

[18] Applicant's handwriting exemplar is GX 9. GX 9 was admitted without objection. Tr. 271.

questioning and cross-examination, solicited his testimony about his medical licenses, his New Jersey and DEA controlled substance registrations and registration applications, his employment as a physician, his prescribing of controlled substances, and his interactions with DEA investigators, among other things. *See, e.g., id.* at 328–417, 554–601, 618–23. Some of Applicant's testimony confirmed evidence offered by the Government and some of it conflicted with evidence offered by the Government. *Infra,* section II.D., section II.G.

D. Applicant's Case

As already discussed, Applicant testified. *Supra,* section II.C. He also offered the testimonies of three individuals, family and friends, and successfully moved twelve exhibits into evidence, including affidavits or certifications of eight other individuals, including family members and friends.[19]

In addition to the subjects already listed about which Applicant testified when called by the Government, Applicant testified about his career before medical school, his decision to study medicine and become a physician, his efforts to ensure his appropriate prescribing of controlled substances, his acceptance of responsibility, and his remedial measures, among other things. Tr. 418–59, 490–529, 608–15.

Applicant testified that he did not submit false material in registration applications he submitted to DEA. *Id.* at 356–59, 364–67.

Applicant admitted multiple times when testifying that he issued eleven controlled substance prescriptions when he did not have federal and state authority to do so. *See, e.g., id.* at 359–62, 369–74, 379, 728; *see also* Stipulations 12–23. Applicant's testimony admits that he did not realize that the medications he was prescribing were controlled when he wrote them. Tr. 374. He testified that he relied on drug representative representations that the drugs were not controlled. *Id.* at 377. He testified ''[t]hat [it] was . . . [his] mistake that . . . [he] didn't do due diligence to . . . look them up on the internet . . . [him]self.'' *Id.* Applicant testified that he knows of no software package that identifies a drug as scheduled when a prescriber is writing it, or a database he could have used to learn if a drug was scheduled. *Id.* at 377–78.

Applicant denied submitting false documents to DEA, lying to DEA investigators, and intending to mislead DEA and DEA investigators. *See, e.g., id.* at 358–59, 381–84, 402–03, 415. He also admitted managing incorrectly and inappropriately those for whom he prescribed controlled substances. *See, e.g., id.* at 400–01, 404–05, 413–14. The record does not, however, include any statement by Applicant unequivocally accepting responsibility for this incorrect and inappropriate management of those for whom he prescribed controlled substances.

As already discussed, in the final Consent Order with the NJMB, Applicant denied ''any and all wrongdoing.'' *Supra,* section II.B. That written denial was echoed in Applicant's hearing testimony, more than two years later. After Government counsel argued that Applicant had not accepted responsibility, Applicant's counsel asked him, instead, ''with respect to the New Jersey consent order of temporary suspension, do you accept that you are bound by that suspension?'' Tr. 528. Applicant answered, ''[y]es, absolutely,'' adding that he ''was concerned by . . . [Government counsel's] comments.'' *Id.* Applicant then added that he ''accept[s] responsibility,'' he is ''an adult,'' he ''want[s] to do better,'' he is ''embarrassed by some of . . . [his] errors, and . . . [he] take[s] full responsibility. I regret these.'' *Id.; see also id.* at 612–13 (Applicant's testimony that he is not seeking to relitigate the decision of the NJMB). I find that Applicant specified neither what he was accepting responsibility for nor the errors of his for which he took ''full responsibility.''

Also regarding acceptance of responsibility, Applicant testified about the second to last paragraph of his email to DEA investigators on August 3, 2018, stating ''if a misstep has occurred'' he has ''tremendous desire to correct the previous action, most scrupulously!'' RX 13, at 2. Applicant testified that he ''typically . . . would have closed the meeting'' by stating ''tell me what you'd like me to do'' or ''[t]ell me how we can get through this so I can receive a DEA registration.'' Tr. 504–05. By way of further example, Applicant testified that he was ''trying as a doctor to do . . . [his] best,'' he ''recognize[d] that . . . he could be liable for these mistakes,'' he ''was accepting and taking ownership,'' and ''he wanted to figure this out and improve so . . . [he] could go forward more fully as a doctor, not only with . . . [his] license, but the DEA registration.'' *Id.* at 502. Applicant did not specify the ''mistakes'' he was accepting and taking ownership of and has not convinced me that he understands how his past actions did not comply with legal requirements.

In sum, I find that Applicant's acceptance of responsibility ranged from his accepting responsibility for unspecified errors and mistakes and his wanting to correct any misstep that may have occurred, to being willing to do whatever it would take to avoid liability and to practice medicine with a DEA registration. *Infra,* section IV.

Applicant testified that he ''learned greatly'' and ''tremendously'' from his experience with the NJMB. Tr. 524. Specifically, Applicant testified that he would be ''way more cognizant and tight with . . . [his] documentation and record keeping.'' *Id.* at 525; *see also id.* at 613–14. He also testified that he does not ''believe in using narcotics at all for pain medications in any way'' and that he ''actually specialize[s] in non-narcotic pain relief.'' *Id.* at 525. He testified that he would accept ''monitoring and recording'' in return for a DEA registration, and that he is ''willing to do what they think they need so that . . . [he] can continue working as a doctor with the proper registration.'' *Id.; see also id.* at 528.

Also regarding his future practice of medicine, Applicant testified, and introduced documentary evidence, about four continuing medical education courses he took.[20] *See* RX 12a (Certificate of participation in ''Proper Prescribing of Controlled Prescription Drugs—June 2016'' at Vanderbilt

[19] The ALJ denied Applicant's request that an affidavit and a certification of two of the three individuals who offered oral testimony also be admitted into the record. Tr. 548.

[20] Applicant moved RX 11, his proposed CAP, into evidence. Tr. 545–48. The Government objected and the ALJ denied Applicant's motion, stating that ''it would just confuse the matter, because it's really a pre-hearing proceeding . . . and I have no jurisdiction to consider it, to rule on it.'' *Id.* at 547. The ALJ also stated that the content of the proposed CAP ''is not inadmissible'' and that ''as format it would just be too confusing for the record for us to introduce this into the evidence of the hearing.'' *Id.*

A CAP is to be submitted ''on or before the date of appearance.'' 21 U.S.C. 824(c)(2)(C). There is no date on RX 11. Applicant's Supplemental Prehearing Statement, dated May 18, 2020 (hereinafter, Appl Supp Prehearing), addresses the proposed CAP, stating that Applicant ''also submits a Corrective Action Plan (CAP), which is attached hereto . . . [and] outlines the previous issues with . . . [Applicant's] registration and practice in New Jersey.'' Appl Supp Prehearing, at 3. The fact that Applicant's proposed CAP was attached to Applicant's Supplemental Prehearing Statement necessarily appears to mean that Applicant's proposed CAP was not timely filed.

Further, the option of submitting a CAP offers a respondent the opportunity to avoid a hearing. That opportunity had long passed for Applicant when he moved his proposed CAP into evidence.

For all of the above reasons, I agree with the ALJ's ruling not to admit RX 11 into evidence.

University School of Medicine), 12b (Certificate of Completion of ''Office-Based Treatment of Opioid Use Disorders,'' an online course offered by the American Academy of Addiction Psychiatry), 12c (Certificate of Credit for ''Center for Personalized Education for Physicians Medical Record Keeping Seminar—June 3, 2016'' at Memorial Hospital University of Colorado Health).[21] Applicant testified that the NJMB ''had recommended these courses in the past,'' that he ''took them on . . . [his] own volition so that . . . [he] could demonstrate that . . . [he] . . . wanted the additional information,'' and that they were ''the path . . . [he] took to try to have any correction occur in . . . [his] protocol as a physician.'' Tr. 446; *see also id.* at 442–46. The RD acknowledges the course work Applicant undertook, stating that Applicant ''worked admirably to improve his medical skill and range of abilities, and to further educate himself as to his professional responsibilities.'' RD, at 140. I agree.

Regarding Applicant's credibility, I find that Applicant is the witness with the most at stake in these proceedings. For that reason, I shall consider Applicant's testimony with caution when his testimony conflicts with credible record evidence.[22] Tr. 327–460, 489–623, 644–45, 706–13.

Applicant successfully offered, over the Government's objections, testimonial and documentary record evidence by eleven individuals. *See, e.g., id.* at 528–45, 625–89. The eleven individuals include two brothers, two brothers-in-law, and friends. *Id.* This record evidence includes the individuals' positive opinions about Applicant's integrity, honesty, and trustworthiness. *See, e.g., id.* at 629–30, 650–53, 685–86. There is no record evidence that Applicant serves as the physician for any of these eleven individuals or for any family member of these individuals, let alone that Applicant has prescribed a controlled substance for any of them. The closest this evidence comes to addressing Applicant's general practice of medicine includes the affidavit of a mother of seven referencing her ''always'' having a ''need of a doctor's opinion'' and whose ''first thought is always to call'' Applicant who ''would drop everything and make time to come to . . . [her] home and examine a sick child, day or night,'' the affidavit of a friend stating that Applicant ''provided first aid to both workers and homeowners with a wide variety of cuts, scratches, puncture wounds, and sprained ankles'' in the aftermath of Superstorm Sandy, and the testimony of a friend that Applicant provided him medical treatment only for ''very minor thing[s]'' such as an eye infection, a cold, or something ''very mild like that.'' RX 5, at 1; RX 10, at 2; Tr. 688.

As past Agency decisions show, my predecessors evaluate such oral testimonial and written affidavit and certification evidence based on the relevance of their contents to the matters being adjudicated. *See, e.g., George Pursley, M.D.,* 85 FR 80162, 80180 (2020). There is no record evidence that Applicant ever provided any of these family members and friends formal medical treatment, let alone issued any of them a controlled substance prescription. I find that the three individuals who testified and the eight individuals who submitted a written affidavit or certification provided limited evidence relevant to Applicant's controlled substance prescribing and to whether I should grant DEA registration application No. W18015986C. 21 U.S.C. 823(f).

Accordingly, I find that the content of RX 3 through RX 10 and the oral testimony of Applicant's family member and friends provide limited evidence about Applicant's prescribing of controlled substances, an issue central to my legal responsibilities in this adjudication. Further, regarding RX 3 through RX 10, prior Agency decisions show that my predecessors afforded such written evidence limited weight because of the limited ability to assess the credibility of evidence in written form. *See, e.g., Michael S. Moore, M.D.,* 76 FR 45867, 45873 (2011) (evaluating the weight to be attached to letters provided by the respondent's hospital administrators and peers in light of the fact that the authors were not subjected to the rigors of cross examination). For all of these reasons, I afford minimal weight to RX 3 through RX 10 and to the oral testimonies of Applicant's family member and friends. Tr. 624–89.

E. Allegation That Applicant Materially Falsified DEA Registration Application No. W18015986C

Having read and analyzed all of the record evidence, I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that affirmative responses to a Liability question prompt a DEA investigation. *Id.* at 82, 103. I further find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant accurately responded ''yes'' to the second and third Liability questions on DEA registration application No. W18015986C. *See, e.g.,* Stipulation 10; GX 1c, at 1, 3; Tr. 107. I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that NJ DI completed a Form DEA–104 and presented it to Applicant on May 20, 2015. *See, e.g.,* Tr. 44. I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant signed the DEA-completed Form DEA–104 on May 20, 2015, thus surrendering his DEA registration. *See, e.g.,* Stipulation 6; GX 5; Tr. 44–45.

I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant signed a Consent Order that temporarily suspended his New Jersey CDS registration on May 20, 2015. *See, e.g.,* Stipulation 4; GX 2, at 4; Tr. 42.

I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence accurately setting out Applicant's responses to, and the narrative content of, the second and third Liability questions on DEA registration application No. W18015986C.[23] *See, e.g.,* Stipulation 10, GX 1c, at 1–2.

F. Allegation That Applicant Issued Controlled Substance Prescriptions Without Federal and State Authority

I find uncontroverted, substantial record evidence that Applicant admitted to issuing, and did issue, eleven controlled substance prescriptions when he had neither federal nor state authority to do so. *See, e.g.,* Stipulations 12–23; GX 8, GX 9; Tr. 359–62, 369–74, 379, 728.

[21] The fourth course was about Ethics. Tr. 618. Applicant testified that he participated in the course actively, that he completed it, but that he did not receive continuing medical education credits for it because he did not submit the required final essay. *Id.* at 618–21. He testified that, because his New Jersey case was not resolved and his essay would have been sent to the NJMB, ''it was difficult for . . . [him] to . . . include information in the essay that would be compromising in . . . [his] issues with the . . . [NJMB]. *Id.* at 621.

[22] I note that the RD questions the credibility of some of Applicant's testimony, such as his testimony relating to his issuance of eleven controlled substance prescriptions after he surrendered his DEA registration. *See, e.g.,* RD, at 126, 134.

[23] While the Government's case includes mention of the insufficiency of Applicant's narrative responses to both the second and third liability questions on DEA registration application No. W18015986C, the OSC and other Government submissions specifically allege only that Applicant's narrative response to the second liability question is materially false. *See, e.g.,* OSC, at 4–5.

G. Allegation That Applicant Did Not Exhibit Candor in His Interactions With the Agency and Agency Investigators

The record evidence about whether Applicant exhibited candor in his interactions with the Agency and Agency investigators is not conclusive. Portions of Applicant's testimony and portions of the Government witnesses' testimonies are consistent and other portions conflict. For example, Applicant testified that he did not provide false information in Application No. W18015986C. *See, e.g.,* Tr. 359. The testimony of a DEA investigator, however, disagrees. *See, e.g., id.* at 109, 118 (testimony of MT DI). By way of further example, Applicant testified that his statements to DEA investigators were accurate to the best of his knowledge when he made them. *Id.* at 382 (testimony about whether he prescribed controlled substances after he no longer had state and federal controlled substance prescribing authority). The testimony of a DEA investigator, however, challenges that portion of Applicant's testimony. *Id.* at 266–67 (testimony of GS).

Testimony the Government solicited from Applicant about his statements to DEA investigators challenged the substance of testimony provided by MT DI and GS about some of those statements. For example, MT DI testified that Applicant told her that he issued the eleven controlled substance prescriptions in GX 8 but that ''it wasn't that big of a deal because they were lower level drugs,'' and GS testified that Applicant ''exclaimed,'' as he was flipping through those eleven prescriptions, ''That's why we're here, because of Lomotil?'' *Id.* at 199 (testimony of MT DI), 272 (testimony of GS). Government counsel and the ALJ asked Applicant about the testimony of MT DI and GS concerning these matters. *Id.* at 389–94. Applicant testified that he did not recall making a comment to GS about Lomotil being the reason for the DEA investigation. *Id.* at 394. Regarding whether he told MT DI that, ''because these were lower level prescriptions, it wasn't that big of a deal,'' Applicant testified that ''[t]hat might have been her interpretation, but any scheduled medication is important. There are different degrees of oxycodone's schedule 2 versus something that's schedule 5. But without a DEA or CDS I cannot write it.'' *Id.* at 389; *see also id.* at 391–92 (Applicant's testimony that he did not specifically recall saying low-level prescriptions are not ''that big of a deal'' and that ''[i]n fact, when . . . [he] lost . . . [his] DEA CDS, . . . [he] was calling pharmacies telling them please don't fill any schedule medications, . . . [he doesn't] have . . . [his] DEA or . . . [his] CDS, so that they were aware. So, . . . [he doesn't] want to trivialize the fact that . . . [he] wrote a prescription that was a Schedule V and not a Schedule II.''), *id.* at 393 (He ''can't recall that. . . . [He doesn't] think it's logical for someone to hear, for . . . [MT DI] to interpret that in the conversation if . . . [he] did that.''). He further testified that ''it doesn't seem unreasonable that when . . . [he] was asked if . . . [he] wrote—and . . . [he] was thinking about narcotics that . . . [he] was surprised that it was something not narcotic related, that it was a [B]elviq or lower.'' *Id.* at 390. He testified that he did not recall specifically saying that prescribing ''low-level prescriptions'' is not ''that big of a deal,'' yet he was ''giving her [MT DI] the benefit of the doubt'' that he wears his emotions on his face, and that he does not ''think it's not out of the realm of possibilities . . . [a]nd so . . . [he] won't deny it.'' [24] *Id.* at 390–92.

By way of further example, DEA investigators and Applicant testified about his not having all the patients for whom he prescribed controlled substances sign controlled substance agreements. According to MT DI, Applicant ''didn't really have an explanation to it . . . he didn't explain why he had some do it and not all.'' *Id.* at 158. According to GS, Applicant ''[s]ometimes . . . diverted away from the question and didn't really answer it'' and she concluded that he did not provide a ''full and complete explanation.'' *Id.* at 252. Applicant testified that he did not have the ''same recollection'' as the DEA investigators on the matter. *Id.* at 397. He testified that his desire for the three-hour meeting with DEA investigators was to ''get . . . [his] DEA back.'' *Id.* He testified that he questioned why the investigators were asking him to justify what he did when he had already done that, unsuccessfully, before the NJMB and, successfully, in Montana. *Id.* Applicant testified that he was not trying to justify his controlled substance agreement actions ''because . . . [he] made mistakes'' and he ''recognize[d] that . . . [he] made mistakes and there's things . . . [he] need[s] to learn, but that was what . . . [he] was trying to explain to . . . [the DEA investigators].'' *Id.* at 397–98; *see also id.* at 400–01 (Applicant's response when the ALJ asked him for the explanation he gave the DEA investigators for giving the ''pain contract to some patients but not all,'' including that he ''did speak to each of . . . [his] patients verbally about things and talked with them and documented, but not full documentation. And that is the problem that I take full ownership in.''). When Government counsel asked him to ''explain why . . . in . . . [his] opinion . . . [the DEA investigators'] testimony on . . . [Applicant's response about controlled substance agreements] is incorrect as to the response you provided,'' Applicant testified that he ''can't explain why they came away with that opinion unless the answer to the things . . . [he] was talking about didn't resonate with what they wanted to hear.'' *Id.* at 399–400.

The testimonies of the DEA investigators and Applicant also addressed whether Applicant's responses were ''truthful and candid.'' MT DI testified that Applicant did not give her a ''full and complete explanation'' of why he did ''nothing,'' and kept doing nothing, with the results of the urinalysis tests he employed, such as positive urine drug screens for illegal drugs and negative urine drug screens for controlled substances he had previously prescribed. *Id.* at 160–61; *see also id.* at 162. GS testified that she and MT DI asked Applicant ''repeatedly why didn't he take more proactive steps to talk to his patients and find out where those drugs were going'' and ''he really didn't answer us.'' *Id.* at 256; *see also id.* at 257 (GS testimony that ''[w]e were trying to get why would you continue to practice with all of these red flags right in front of you . . . but we just didn't understand why a physician would prescribe these drugs the way he did''). Applicant, on the other hand, testified that his responses to the DEA investigators' questions were ''truthful and candid.'' *Id.* at 403.

Given that the facts pertaining to Applicant's prescribing of controlled substances with neither federal nor state authority are uncontroverted, it is not necessary that I find any facts pertaining to, nor adjudicate, the OSC's candor allegation, and I decline to do so.

Based on the uncontroverted, substantial record evidence that Applicant admitted to issuing, and did issue, eleven controlled substance prescriptions when he had neither federal nor state authority to do so, I find that the Government presented a *prima facie* case on that OSC allegation.

[24] In the Government's later questioning, counsel clarified that he was asking Applicant about a conversation with MT DI, not a face-to-face meeting with her. Tr. 392. It is possible that Applicant was testifying about the broad ''no big deal''/Schedule II versus Schedule V allegation both DEA investigators raised in their testimonies.

III. Discussion

A. The Controlled Substances Act and the Public Interest Factors

Pursuant to the Controlled Substances Act (hereinafter, CSA), ''[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). The CSA further provides that an application for a practitioner's registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' *Id.* In making the public interest determination, the CSA requires consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether . . . an application for registration [should be] denied.'' *Id.* Moreover, while I am required to consider each factor, I '' 'need not make explicit findings as to each one,' '' and I '' 'can give each factor the weight . . . [I] determine[ ] is appropriate.' '' *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (quoting *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016)); *see also MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009) (quoting *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005))). In other words, the public interest determination ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Peter A. Ahles, M.D.,* 71 FR 50097, 50098–99 (2006).

According to the regulations, ''A prescription for a controlled substance may be issued only by an individual practitioner who is (1) Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession and (2) Either registered or exempted from registration . . . .'' 21 CFR 1306.03(a). I recently reiterated what the Agency has consistently stated: The CSA and its regulations are clear that a registrant must possess the requisite authority under both federal and state law to prescribe a controlled substance lawfully.[25] *Tamika Mayo, M.D.,* 86 FR 69681, 69684 (2021); *see also, e.g., Richard J. Settles, D.O.,* 81 FR 64940, 64946 (2016); *Hoi Y. Kam, M.D.,* 78 FR 62694, 62697–98 (2013); *Anthony E. Wicks, M.D.,* 78 FR 62676, 62678 (2013); *Belinda R. Mori, N.P.,* 78 FR 36582, 36588 (2013); *Bob's Pharmacy and Diabetic Supplies,* 74 FR 19599, 19601 (2009); *Jerry Neil Rand, M.D.,* 61 FR 28895, 28897 (1996).

In this matter, as already discussed, the OSC calls for my adjudication of Applicant's DEA registration application No. W18015986C based on the charge that Applicant submitted a materially false narrative response to its second Liability question. OSC, at 4–5; *supra,* section II.C., section II.E. Material falsification, of course, is a basis for revocation or suspension of a DEA registration. 21 U.S.C. 824(a)(1).

Prior Agency decisions have addressed whether it is appropriate to consider a provision of 21 U.S.C. 824(a) when determining whether or not to grant a practitioner registration application. I recently agreed with the conclusions of Agency decisions over the last forty-five years that it is. *Lisa M. Jones, N.P.,* 86 FR 52196, 52202 (2021); *see also, e.g., Robert Wayne Locklear,* 86 FR 33738 (2021) (collecting Agency decisions). Those decisions have offered multiple bases and analyses for that conclusion. 86 FR at 33744–45. I again agree with my predecessors' conclusions that a provision of 21 U.S.C. 824 may be the basis for the denial of a practitioner registration application, and that the 21 U.S.C. 823 public interest factors remain relevant to the adjudication of a practitioner registration application when a provision of 21 U.S.C. 824 is involved. *Id.*

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. In this matter, while I have considered all of the public interest factors, the Government's evidence in support of its *prima facie* case is confined to Factors Two and Four.[26] The Government's Proposed Findings of Fact, Conclusions of Law, and Argument dated July 22, 2020 (hereinafter, Govt Posthearing), at 31; 21 U.S.C. 823.

B. Allegation That Applicant Materially Falsified Registration Application No. W18015986C

Regarding 21 U.S.C. 824(a)(1), I recently decided that the elements of a material falsification according to the Supreme Court's decision in *Kungys* v. *United States,* 485 U.S. 759 (1988), and its recent progeny, are consistent with the CSA. *Lisa M. Jones, N.P.,* 86 FR at 52202; *see also, e.g., Frank Joseph Stirlacci, M.D.,* 85 FR 45229, 45238 (2020). According to that Supreme Court precedent, ''material'' means having ''a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed.'' *Frank Joseph Stirlacci, M.D.,* 85 FR at 45238 (citing *Kungys,* 485 U.S. at 770).

The Government argues that, although Applicant correctly responded ''yes'' to the second Liability question, his narrative response omitted specific reference to his DEA registration, focusing, instead, on why he thought the NJMB's conclusions about his medical practice were wrong. Govt Posthearing, at 27–31. In other words,

[25] Given the clear requirements of the CSA, 21 U.S.C. 802(10) and (21), and its regulations, 21 CFR 1306.03, that a practitioner must have the requisite authority under both federal and state law to prescribe a controlled substance, I need not, and I decline to, address the OSC's allegations that Applicant violated 21 U.S.C. 822(a)(2), 841(a)(1), and 843(a)(2).

[26] As to Factor One, neither party posits that the Montana state licensing board has recommended for or against the issuance of a DEA registration to Applicant. Further, I find that the final New Jersey Consent Order states that the ''New Jersey State Board of Medical Examiners takes no position with respect to any application by . . . [Applicant] for DEA credentials/privileges in any other state.'' GX 4, at 2.

As to Factor Three, there is no evidence in the record that Applicant has a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as prior Agency decisions have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808 (10th Cir. 2011). Those Agency decisions have therefore concluded that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* I agree.

The Government does not argue that its case includes an allegation cognizable under Factor Five. Govt Posthearing, at 31.

the Government argues that Applicant's response to the follow-up engendered due to his ''yes'' response to the second Liability question is materially false because it does not disclose responsive information pertaining to his DEA registration. *E.g., id.* at 5–7. Consequently, I now address whether Applicant's DEA registration application No. W18015986C is materially false according to the *Kungys* definition of ''material.''

As already discussed, I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant answered ''yes'' to the second Liability question on DEA registration application No. W18015986C. *Supra,* section II.E. In addition, as already discussed, I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that Applicant's ''yes'' answers to Liability questions two and three were true. *Id.* As already discussed, I find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that NJ DI completed and presented to Applicant the Form DEA–104 that Applicant signed on May 20, 2015. *Id.* From the record evidence that the Government submitted, I also find uncontroverted, substantial, clear, unequivocal, and convincing record evidence that both MT DI and GS knew, or had reason to know, that Applicant had surrendered his DEA registration based on Applicant's affirmative response to the second Liability question on DEA registration application No. W18015986C. *Id.*

The found facts of this adjudication are unique and not likely ever to recur. Based on those facts, there are many reasons why Applicant's narrative follow-up to his ''yes'' response to the second Liability question did not have a ''natural tendency to influence'' and was not ''capable of influencing'' the Agency's decision regarding Applicant's DEA registration application No. W18015986C. For example, Applicant accurately responded in the affirmative to the second Liability question on DEA registration application No. W18015986C and responded with the correct ''incident date'' and the correct ''incident location'' in the narrative. Further, DEA investigators filled in a Form DEA–104, presented it to Applicant, explained it to Applicant, told Applicant why they were offering him the opportunity to sign it and surrender his DEA registration, and obtained from Applicant his signature on it and the surrender of his DEA registration No. FT2321797.[27] *Id.* All of this accurate information about Applicant's DEA registration surrender (for cause) was available to the assigned DEA investigator.

Accordingly, on the unique and unlikely ever to recur record evidence before me, I conclude that the narrative responses regarding ''incident nature'' and ''incident result'' Applicant provided for the second Liability question on his DEA registration application No. W18015986C were not ''predictably capable of affecting, that is, had a natural tendency to affect, the official decision'' of DEA.

C. Factors Two and/or Four—The Applicant's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances; Allegation That Applicant Issued Controlled Substance Prescriptions Without Federal and State Authority

At the core of the CSA is the principle that having the requisite federal and state authority is essential to the lawful issuance of a controlled substance prescription. *See Gonzales* v. *Raich,* 545 U.S. 13–14, 27 (2005). The adjudication of the OSC allegation that Applicant issued controlled substance prescriptions without federal or state authority is factually and legally clear. As already discussed, Applicant admitted to issuing eleven controlled substance prescriptions when he did not have the requisite federal and state authority. *Supra,* section II.F. Further, it is clear that, for a practitioner to issue a controlled substance prescription lawfully, he must have both federal and state authority to do so. 21 CFR 1306.03; *supra,* section III.A. Accordingly, I conclude that there is uncontroverted, substantial record evidence that Applicant unlawfully issued eleven controlled substance prescriptions, as he admitted. *Supra,* section II.F, section III.A; *see also* Appl Exceptions, at 4–6. The founded violations of unlawfully prescribing controlled substances eleven times implicate Factors Two and Four. 21 U.S.C. 823(f)(2) and (4).

Applicant's eleven unlawful controlled substance prescriptions violate a core principle of the CSA and constitute egregious misconduct. *Supra.* Accordingly, I conclude that it is appropriate to sanction Applicant for these violations.

Summary of Factors Two and Four

As already discussed, Applicant admitted to issuing eleven controlled substance prescriptions when had neither federal nor state authority to do so. *Supra,* section II.F, section III.A; *see also* Appl Exceptions, at 4–6. Accordingly, I conclude that Applicant engaged in egregious misconduct and that the denial of DEA registration application No. W18015986C is, thus, appropriate. 21 U.S.C. 823(f)(2) and (4); *see Wesley Pope,* 82 FR 14944, 14985 (2017).

IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that my issuance of a DEA registration to Applicant would be inconsistent with the public interest due to his issuance of eleven controlled substance prescriptions when he had neither federal nor state authority to do so, the burden shifts to Applicant to show why he can be entrusted with a DEA registration. *Garrett Howard Smith, M.D.,* 83 FR 18882, 18910 (2018) (collecting cases). Moreover, as past performance is the best predictor of future performance, DEA Administrators have required that an applicant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that he will not commit violations in the future. *Id.* An applicant's acceptance of responsibility must be unequivocal. *Id.* In addition, an applicant's candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *Id.* (collecting cases). In addition, DEA Administrators have found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* DEA Administrators have also considered the need to deter similar acts by the applicant and by the community of registrants and potential registrants. *Id.*

Regarding his issuing eleven controlled substance prescriptions when he had neither federal nor state authority to do so, Applicant was asked ''with respect to the prescriptions that you wrote, the alleged prescriptions, have you acknowledged writing after your DEA registration was surrendered? Do you accept responsibility for that?'' Tr. 528. Applicant responded, ''Yes. I'm

[27] Given the unique found facts in this matter, my findings and conclusions do not impact prior Agency decisions stating, for example, that misinterpretation of the application does not relieve an applicant of the responsibility to read the question carefully and answer all parts of it honestly, or that negligence and carelessness in completing an application could be a sufficient reason to revoke a registration. *See, e.g., Martha Hernandez, M.D.,* 62 FR 61145, 61147 (1997) (finding that respondent submitted material falsifications that are grounds for revocation, but concluding that revocation is not an appropriate sanction in light of the facts and circumstances).

embarrassed by some of my errors, and I take full responsibility. I regret these.'' *Id.* The meaning of this portion of Applicant's testimony is far from clear. First, it is impossible to determine to which question Applicant was responding ''yes'' given that the transcript shows that he was asked two different questions. *Id.* Second, Applicant stated that he is ''embarrassed'' by ''some'' of his ''errors.'' *Id.* Again, it is impossible to determine which of Applicant's ''errors'' embarrass him because Applicant neither explained what he considers his ''errors'' to be nor stated which subset of his ''errors'' embarrass him. *Id.* Third, Applicant's testimony is not clear about what the subject of his taking ''full responsibility'' is.

Further, in the context of his issuing controlled substance prescriptions with neither federal nor state authority, Applicant's attempt to minimize his wrongdoing by distinguishing between ''narcotics'' and the Schedule IV and Schedule V prescriptions he issued is troubling because the distinction is legally irrelevant. Tr. 390 (Applicant's testimony that ''it doesn't seem unreasonable'' for him to have been surprised that he had written ''a [B]elviq or lower'' when he had been thinking about ''narcotics''). The law does not distinguish among controlled substances' schedules. It is unlawful to issue a prescription for any controlled substance without the requisite federal and state authority. 21 CFR 1306.03. In sum, the record evidence does not support my concluding that Applicant unequivocally accepts responsibility for issuing eleven controlled substance prescriptions when he did not have federal and state authority to do so. *See also supra,* section II.D. None of Applicant's record evidence, including his testimony, convinces me that I can entrust him with a DEA registration by granting DEA registration application No. W18015986C.

Also during his testimony, Applicant's counsel asked him ''with respect to the New Jersey consent order of temporary suspension'' whether he ''accept[s] that . . . [he] is bound by that suspension.'' Tr. 528. Applicant's answer was ''[y]es, absolutely. I was concerned by . . . comments [of Government counsel]. I accept responsibility; I'm an adult, and I want to do better.'' *Id.* Again, I am not able to conclude from this testimony that Applicant accepts unequivocal responsibility and, if he does, for what. I also note that Applicant ''denie[d] any and all wrongdoing'' in the final Consent Order, thus indicating that he did not accept unequivocal responsibility for his NJMB-founded controlled substance-related violations. GX 4, at 2; *see also supra,* section II.D.

In sum, Applicant did not unequivocally accept responsibility and has not convinced me that he can be entrusted with the registration he applied for in DEA registration application No. W18015986C. *See also infra.*

The interests of specific and general deterrence weigh in favor of denial of Applicant's DEA registration application No. W18015986C. Applicant issued eleven controlled substance prescriptions when he had neither federal nor state authority to do so, a violation at the core of the CSA. While Applicant is to be recognized for taking controlled substance-related and documentation/recordkeeping-related courses, his testimony in this proceeding has not convinced me that his future controlled substance prescribing, documentation, and recordkeeping will comply with legal requirements.

Further, given the egregious nature of Applicant's violations, including that he unlawfully wrote eleven controlled substance prescriptions for six different Schedule IV and Schedule V controlled substances, a sanction less than denial of Applicant's DEA registration application No. W18015986C would send a message to the current and prospective registrant community that compliance with the law, including compliance with core controlled-substance legal principles, is not a condition precedent to receiving and maintaining a DEA registration.

Accordingly, I shall order the sanction the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny DEA registration application No. W18015986C submitted by Eric David Thomas, M.D. I further hereby deny any other pending application(s) of Eric David Thomas, M.D., for registration in Montana. This Order is effective June 17, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–10591 Filed 5–17–22; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 21–19]

Michael T. Harris, M.D.; Decision and Order

On May 20, 2021, a former Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC), seeking to revoke the DEA Certificate of Registration, Control No. FH1510709, of Michael T. Harris, M.D. (hereinafter, Respondent) and deny any pending applications for renewal or modification of such registration, or for additional registrations, pursuant to 21 U.S.C. 824(a)(4). OSC, at 1. The Government alleges that Respondent's continued registration is inconsistent with the public interest, as defined in 21 U.S.C. 823(f). *Id.*

A hearing was held before an Administrative Law Judge (hereinafter, ALJ) on October 12, 2021. The ALJ issued Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD), which recommended that I revoke Respondent's registration and deny his pending application for renewal. RD, at 39. Respondent filed Exceptions to the RD on January 7, 2021, and the Government filed its Response on January 28, 2022.

I. Findings of Fact

A. Witness Credibility

The Government presented its case through the testimony of two witnesses, a DEA Diversion Investigator (hereinafter, DI), Tr. 16–58, 200–01, and Dr. L, a former colleague of Respondent, Tr. 60–80. The ALJ gave the DI and Dr. L's testimonies full weight and credit. RD, at 7, 9. I adopt her summary of their testimonies and credibility determinations. *Id.* at 5–9.

Respondent presented his case through two witnesses, Dr. R., who medically monitored Respondent's drug rehabilitation, Tr. 80–144, and Respondent, Tr. 144–190. The ALJ gave little weight to Dr. R's testimony—finding that Dr. R was a ''combative and, at times, condescending witness,'' who had a vested interest in Respondent retaining his DEA registration. RD, at 13–14. I agree with the ALJ's findings and adopt her credibility determination for Dr. R's testimony. *Id.*

I also agree with the ALJ's credibility findings regarding Respondent's

testimony. The ALJ found that Respondent presented as generally credible to the extent he recounted his efforts at rehabilitation from his substance abuse disorder. RD, at 18. But, as the ALJ pointed out, Respondent's testimony was noteworthy for what it lacked—there was virtually no acknowledgement of the fraud Respondent committed or the numerous people he manipulated and harmed during the fraud. *Id.* at 18–19. The ALJ found, as a result, that ''Respondent's testimony sounded rehearsed and his demeanor and body language in testifying was nonchalant. His testimony and demeanor sent the message that, while he had a substance abuse problem, he had successfully engaged in a rehabilitation program and that should be an end to the inquiry.'' *Id.* at 19.

B. Respondent's Fraudulent Prescriptions and Criminal Indictment

Respondent is a Florida physician who holds a DEA registration to handle controlled substances in Schedules II–V. Stip. 6. From November 2015 through July 2016, Respondent issued twenty-four prescriptions for controlled substances using the DEA registration number of Dr. L. Tr. 27, GX 2. Respondent admitted that he did not have authorization or permission from Dr. L to issue the prescriptions using Dr. L's DEA registration number. Tr. 27, 65–72, 149. Respondent obtained the prescriptions, some signed and some unsigned, from a lockbox at their joint practice. Tr. 26, 149, 153–54. Respondent used the prescriptions, forging Dr. L's signature when necessary, to issue controlled substance prescriptions to himself and three family members. *Id.* Respondent filled the prescriptions for his personal use. Tr. 30, 191–92. Respondent deliberately filled prescriptions 30 days apart, rotated the names he used on the prescriptions, and rotated which pharmacy he would use in an effort to avoid detection. Tr. 88.

Dr. L first learned of Respondent's misuse of his prescription pad in August 2016. Tr. 74. Dr. L sent a letter to the Florida Board of Medicine stating that prescriptions were written under his name without his consent and confronted Respondent. Tr. 74–75.

On October 15, 2019, Respondent was indicted in the Northern District of Florida on one count of fraudulent acquisition of controlled substances in violation of 21 U.S.C. 843(a)(3) and (d)(1) and one count of unlawful use of another's DEA registration in violation of 18 U.S.C. 1028(a)(7) and (b)(3)(A). Stip. 12. As of the date of the hearing for this matter, Respondent was participating in a pretrial diversion program scheduled to end December 25, 2021. Tr. 178.

The DI twice asked Respondent to voluntarily surrender his DEA registration, once after an interview with Respondent in April of 2017 and once after Respondent's criminal indictment. Respondent declined both times. Tr. 31, 56–7.

C. Respondent's Rehabilitation

After Respondent was confronted by Dr. L about the fraudulent prescriptions, Respondent's wife, in conjunction with Dr. L, called the Florida Department of Health who referred them directly to the Professional Resources Network (hereinafter, PRN), which has a contract with the Florida Department of Health to ''monitor physicians and nurses and other licensed practitioners in different fields for impairment issues.'' Tr. 83, 100, 157, 159, 186. Respondent began a rehabilitation program on August 27, 2016, which he reports included inpatient detoxification, inpatient therapy, and constant monitoring. Tr. 157–58, 162–64. According to Respondent, he was discharged pursuant to a PRN monitoring contract, under which he had a PRN social worker or ''case manager'' to whom he reported regularly; weekly PRN meetings for impaired professionals; a licensed psychologist to ensure compliance; mandatory Alcoholics Anonymous (AA) meetings; meetings with an addictionologist (Dr. R); marriage counseling; and random, but regular, drug testing. Tr. 169. He must also regularly check in with his case manager and his practice manager (another physician who reviews his prescriptions and submits quarterly reports to PRN). Tr. 172, 195.

Respondent's PRN contract was scheduled to terminate on December 19, 2021. Tr. 168, 197. Once the contract ended, Respondent would no longer be required to participate in therapy or be subject to drug testing and practice monitoring. Tr. 197–98. When asked if he was planning on stopping all counseling and treatment at the expiration of the contract, Respondent replied that ''there are several options that we considered, and that's something I would discuss with my wife'' but did definitively testify that he would return to AA meetings. Tr. 183–84

II. Discussion

Section 304(a) of the Controlled Substances Act (hereinafter, CSA) provides that ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In the case of a practitioner, the CSA requires the Agency consider the following factors in determining whether Respondent's registration would be inconsistent with the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). The DEA considers these public interest factors separately. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

The Government has the burden of proving that the requirements for revocation of a DEA registration in 21 U.S.C. 824(a) are satisfied. 21 CFR 1301.44(e). When the Government has met its *prima facie* case, the burden then shifts to the Respondent to show that revoking the registration would not be appropriate, given the totality of the facts and circumstances on the record. *Med. Shoppe-Jonesborough,* 73 FR 364, 387 (2008). Having reviewed the record and the ALJ's Recommended Decision, I agree with the ALJ that the Government has proven by substantial evidence that Respondent committed acts which render his continued registration inconsistent with the public interest.

While I have considered all of the public interest factors, the Government's case seeks the revocation of Respondent's registration based primarily on conduct most aptly considered under Public Interest Factors 2 and 4.[1] [2] Factors 2 and 4 are often

[1] Neither the Government nor Respondent introduced evidence of any action by the appropriate state entity. There is also no evidence on the record that Respondent has a criminal conviction related to controlled substances.

Continued

analyzed together. *See, e.g., Fred Samimi, M.D.,* 79 FR 18698, 18709 (2014). Under Factor 2, the DEA analyzes a registrant's ''experience in dispensing . . . controlled substances.'' 21 U.S.C. 823(f)(2). Factor 2 analysis focuses on a registrant's acts that are inconsistent with the public interest, rather than on a registrant's neutral or positive acts and experience. *Randall L. Wolff, M.D.,* 77 FR 5106, 5121 n.25 (2012) (explaining that ''every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of [the registrant's] professional career''). Similarly, under Factor 4, the DEA analyzes a registrant's compliance with federal and state controlled substance laws. 21 U.S.C. 823(f)(4). Factor 4 analysis focuses on violations of state and federal laws and regulations. *Volkman* v. *DEA,* 567 F.3d 215, 223–24 (6th Cir. 2009).

Respondent clearly violated both federal and state law when he issued fraudulent prescriptions using Dr. L's DEA registration number and, in some instances, with Dr. L's forged signature. First, Respondent issued prescriptions for his own personal use to feed his addiction, not for a legitimate medical use. This violates 21 U.S.C. 844(a), which provides that: ''[i]t shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice.'' Respondent's actions also violate Florida law, which provides, consistent with the federal law, that

> [a] person may not be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter.

Fla. Stat. Ann. § 893.13(6)(a).

Second, Respondent violated federal and state law when he used Dr. L's DEA registration number to issue fraudulent prescriptions. It ''shall be unlawful for any person knowingly or intentionally . . . to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is . . . issued to another person.'' 21 U.S.C. 843(a)(2). Moreover, it ''shall be unlawful for any person knowingly or intentionally . . . to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.'' *Id.* at (a)(3). Again, Florida law has a similar provision. Fla. Stat. Ann. § 893.13(7)(a)(9) (making it unlawful to ''acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.''). Accordingly, Factors 2 and 4 weigh in favor of revocation.

III. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that a respondent's continued registration is inconsistent with the public interest due to his violations pertaining to controlled substances, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by his registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018) (citing *Samuel S. Jackson,* 72 FR 23848, 23853 (2007)). DEA cases have repeatedly found that when a registrant has committed acts inconsistent with the public interest, ''the Respondent is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.'' *Holiday CVS LLC dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

I find, as the ALJ did, that Respondent has not unequivocally accepted responsibility for his misconduct. To begin, Respondent's testimony and overarching case strategy makes clear that he believes entering a rehabilitation program constitutes acceptance of responsibility. Tr. 175 (Q: ''Did you take responsibility for your actions,'' A: ''Yes, I thought I had already showed that by going to rehab at that time.''). While rehabilitation is an essential pre-requisite for trusting a person with a substance use disorder with a registration, it does not address all of the misconduct here—the calculated fraud which involved a coherent strategy of deception achieved through the manipulation of multiple people and ended only because Respondent was caught. *Cf. Noah David, P.A.,* 87 FR 21665, 21173–74 (2022) (Registrant manipulated relationships and engaged in intentional deceit to unlawfully obtain controlled substances). Respondent was conspicuously silent on this aspect of the case, providing minimal details about the fraud, minimizing the scope of his misconduct by characterizing the fraud as ''improper prescribing,'' and primarily ignoring that he manipulated a series of people, stole pre-signed prescriptions, and forged Dr. L's signature. RD, at 30. Respondent also violated his entrusted position as a DEA registrant by using his knowledge of the regulatory system to avoid detection, *e.g.,* rotating the names on the prescriptions, rotating the pharmacies where he filled the prescriptions, and waiting thirty days before refilling a prescription. *Id.* at 30, 36.

Second, Respondent's decision to seek rehabilitation was not entirely voluntary; he did so only after he knew Dr. L had reported him to authorities. Respondent's attempt to characterize his rehabilitation efforts as voluntary further suggest that he has not truly accepted responsibility for his conduct, but is merely seeking to portray himself in the most favorable light in these proceedings. *Id.* at 30.

When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures. *Ahuja,* 84 FR at 5498 n.33; *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74801, 74810 (2015); *see also Jones Total Health Care Pharmacy, LLC, SND Healthcare, LLC,* 881 F.3d 823, 833 (11th Cir. 2018) (upholding DEA's refusal to consider pharmacy's remedial measures given lack of acceptance). But

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Accordingly, I find that Factors 1 and 3 do not weigh for or against revocation. *See, e.g., Ajay S. Ahuja, M.D.,* 84 FR 5479, 5490 (2019); *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010), *pet. for rev. denied, MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 822 (10th Cir. 2011).

[2] Respondent filed an exception to the ALJ's finding that Factor 5 weighed neither for nor against Respondent. Exceptions, at 12–13. He argues the ALJ should have found that Factor 5 weighed in Respondent's favor because ''Respondent voluntarily accepted treatment [for his substance abuse disorder] and has remained steadfast in his commitment to completing his rehabilitation.'' *Id.* Factor 5 analysis focuses on a registrant's conduct that may threaten the public health and safety and that was not considered under the other public interest factors. 21 U.S.C. 823(f)(5). Respondent does not cite to any precedent for his argument that Factor 5 should weigh in favor of a registrant with a substance abuse disorder if that registrant has completed rehabilitation. I, therefore, reject Respondent's exception. I will further consider Respondent's rehabilitation in the Sanction section, as the ALJ did, as part of my determination of whether Respondent can be entrusted with a registration.

even if I were to consider Respondent's remedial measures, they would not affect my ultimate decision in this matter. While I give Respondent credit for the rehabilitation he has pursued so far, it is significant that Respondent has never sustained his sobriety outside the context of a regulated drug program and has provided no documentary evidence corroborating his sobriety and remedial measures. I find it troubling that as of the date of the administrative hearing, he had no set plans for further treatment or other remedial measures once his PRN contract expired. Respondent's remedial measures also dealt only with his drug addiction, and he provided no evidence of remedial measures with respect to his fraudulent scheme aside from taking general, required courses on proper prescribing. Tr. 193–94. Thus, Respondent's remedial measures are inadequate given his lack of corroborating evidence of the measures he has already undertaken, his nonexistent plan for the future, and his failure to show any remedial measures related to his fraud.[3]

In addition to acceptance of responsibility, the Agency looks to the egregiousness and extent of the misconduct, *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases), and gives consideration to both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74810 (2015). Here, Respondent's fraud was egregious—he perpetrated a calculated, sophisticated scheme, manipulating those who trusted him, and using his knowledge as a DEA registrant to evade detection. *See Jana Marjenhoff, D.O.,* 80 FR 29067, 29095 (2015). As for general deterrence, failing to impose a significant sanction against Respondent would send the wrong message to other registrants that the Agency does not take fraud seriously—especially a fraudulent scheme in which a registrant uses his knowledge of the controlled system of distribution to defeat it. Such a message would be inconsistent with past Agency precedent and the goals of the CSA. *Id.*

As for specific deterrence, the ''Agency also looks to the nature of the crime in determining the likelihood of recidivism and the need for deterrence.'' *Jeffrey Stein, M.D.,* 84 FR 46968, 49973 (2019). The Agency has previously found that criminal convictions and sanctions by state licensing authorities can sufficiently deter physicians from engaging in misconduct, making the revocation of a registration unnecessary to achieve specific deterrence. *Kansky J. Delisma, M.D.,* 85 FR 23845, 23854 (2020). Here, Respondent has not been criminally convicted and there is no evidence in the record that he has faced any sanctions by the state licensing authority. As a result, the interest of specific deterrence clearly favors the sanction of revocation.

As discussed above, to avoid sanction when grounds for revocation exist, a respondent must convince the Administrator that he can be entrusted with a registration. I find that Respondent has not met this burden.[4] Accordingly, I shall order the sanctions the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. FH1510709 issued to Michael T. Harris, M.D. Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I further hereby deny any pending application to renew or modify this registration, as well as any other pending applications of Michael T. Harris, M.D. This Order is effective June 17, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–10598 Filed 5–17–22; 8:45 am]

BILLING CODE 4410–09–P

[3] Respondent argues the ALJ did not give proper weight to his handling of controlled substances during the five years between the fraudulent prescriptions and the OSC. Exceptions, at 20–21. I agree with the ALJ that, while the record does not contain any evidence that Respondent has issued fraudulent prescriptions or tested positive for drugs since 2016 (an assertion for which he has provided no documentary support), I cannot conclude Respondent has learned from his mistakes and can be entrusted with a new registration because of his failure to acknowledge his fraud and the impact it had on those he manipulated and placed in legal jeopardy. RD, at 34.

[4] In his Exceptions, Respondent re-raises nine DEA cases he previously cited in his posthearing brief and cites to three additional cases, which, he argues, demonstrate revocation in this matter is improper. Exceptions, at 24–27. I disagree. As noted in the RD, clear Agency precedent requires full acceptance of responsibility, and Respondent has failed to demonstrate such acceptance. *See* RD, at 38–39 (collecting cases). Imposing a sanction of revocation in this matter is consistent with recent agency decisions that have revoked registrations in matters where a registrant unlawfully obtained controlled substances for personal use and failed to accept full responsibility. *See, e.g. David Mwebe, M.D.,* 85 FR 51065, 51068 (2020) (revoking registration based on fraudulent issuance of prescriptions for personal use); *David W. Bailey, M.D.,* 81 FR 6045, 6047 (2016) (revoking registration of physician who issued controlled prescriptions in his wife's name for personal use). For example, in *Erica Grant, M.D.,* the Agency revoked the registration of a registrant with a substance abuse disorder because, while she had accepted responsibility for her unlawful use of controlled substances, her acceptance of responsibility did not cover all of the Agency's charges against her. 86 FR 40641, 40650 (2021); *see also, Robert Wayne Locklear, M.D.,* 86 FR 33738, 33747–48 (2021).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–041]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to use a currently approved information collection. This information collection, OMB 3095–0037, covers requests for civilian service records from former Federal civilian employees or other authorized individuals—for information from, or copies of, documents in Official Personnel Files (OPF) or Employee Medical Files (EMF). We invite you to comment on this proposed information collection.

DATES: OMB must receive written comments on or before June 17, 2022.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to *www.reginfo.gov/public/do/PRAMain.* You can 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: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on March 8, 2022 (87 FR 13011) and we received no comments. We are therefore submitting the described information collection to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform

its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

Title: Requests for Civilian Service Records (formerly Forms Relating to Civilian Service Records).

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 57,899.

Estimated time per response: 5 minutes per form.

Frequency of response: On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

Estimated total annual burden hours: 4,824 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in their requests certain information about the employee and the nature of the request so that we can determine whether they are authorized to receive the information and so that we can find the correct records. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a personnel or medical record.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2022–10640 Filed 5–17–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–043]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to use a currently approved information collection, Facility Access Media (FAM) Request, NA Form 6006, used by all individuals requesting recurring access to non-public areas of NARA's facilities and IT network. We invite you to comment on this proposed information collection.

DATES: OMB must receive written comments on or before June 17, 2022.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to *www.reginfo.gov/public/do/PRAMain.* You can 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: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on March 8, 2022 (87 FR 13010) and we received no comments. We are therefore submitting the described information collection to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

Title: Facility Access Media (FAM) Request.

OMB number: 3095–0057.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: All individuals who require recurring access to non-public areas of NARA's facilities and IT network (such as NARA employees, contractors, volunteers, NARA-related foundation employees, volunteers, interns, and other non-NARA Federal employees, such as Federal agency reviewers), herein referred to as ''applicants,'' complete the Facility Access Media (FAM) Request, NA Form 6006, in order to obtain NARA Facility Access Media (FAM). After we review the request, we issue the applicant a FAM, if approved, and they are then able to access non-public areas of NARA facilities and IT network. Collecting this information is necessary to comply with Homeland Security Presidential Directive (HSPD) 12 requirements for secure and reliable forms of personal identification issued by Federal agencies to their employees, contractors, and other individuals requiring recurring access to non-public areas of Government facilities and information services. We developed this form to comply with this requirement.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2022–10642 Filed 5–17–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–042]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to use a new information collection. We are beginning a new recruitment program that connects veterans and Schedule A-eligible applicants with an opportunity for non-competitive employment. We propose to collect information from people who are interested in these opportunities in order to consider them for the positions and match them with possible jobs. The collection includes approval of a form, NARA Employment Interest Questionnaire, NA Form 3102. We invite you to comment on this proposed information collection.

DATES: OMB must receive written comments on or before June 17, 2022.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to *www.reginfo.gov/public/do/PRAMain.* You can 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: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at *tamee.fechhelm@nara.gov* or by telephone at 301.837.1694 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on March 8, 2022 (87 FR 13009) and we received no comments. We are therefore submitting the described information collection to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

Title: Schedule A and Veterans Recruitment Initiative Information.

OMB number: 3095–NEW.

Agency form number: NA Form 3102, NARA Employment Interest Questionnaire.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 600.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 50.

Abstract: We are implementing a new recruitment initiative by which we work to connect people who are veterans or are Schedule A-eligible with non-competitive employment opportunities within our agency. The Special Program Placement Coordinator (SPPC) serves as a liaison between the applicant and NARA managers and supervisors to find viable employment opportunities for applicants.

SPPC has developed a Resumé Repository (retained in a spreadsheet) to store resumés of qualified individuals who may meet our hiring needs. The Repository helps our agency find highly motivated veterans and Schedule A candidates who are eager to demonstrate their abilities in the workplace through excepted service positions, which could become permanent positions after trial period requirements have been met.

We collect the information for the Repository through an online form, NARA Employment Interest Questionnaire, NA Form 3102, which includes the following information for each individual: Applicant name, email address, phone number, types of positions applicant is interested in (may be multiple areas of interest), applicant's desired location(s), and minimum starting grade level applicant is willing to accept.

We enter the collected information from the questionnaire into the Repository spreadsheet, which managers and supervisors can use to sort and filter by position(s) of interest and/or duty location. We include resumés and cover letters as a link beside each candidate's entry so managers can view them and consider the candidate when looking for an employee. Managers have unlimited access to the Repository information and resumés to select qualified applicants to fill vacancies through a direct, non-competitive hire.

The Schedule A and veterans recruitment questionnaire link will be listed in our agency's information on the OPM website, in information provided by other agencies and organizations with similar programs, and on various pages of our agency's website at *www.archives.gov.*

Candidates must be U.S. citizens, eligible veterans, or be eligible under the Schedule A hiring authority.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2022–10641 Filed 5–17–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Virtual Site Review of operations and data analysis for the Telescope Array Project (1208).

Date and Time: June 13, 2022–June 15, 2022; 10:30 a.m.–6:30 p.m. EDT each day.

Place: University of Utah, Department of Physics and Astronomy, (155 S), 1452 E, Salt Lake City, UT 84112 | Virtual Site Visit via Zoom.

Type of Meeting: Part-Open.

Contact Persons: Darren Grant, Program Director, Division of Physics, (*dgrant@nsf.gov*) (703.292.4889). National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

Purpose of Meeting: Virtual site visit to provide an evaluation of the operations and data analysis activities of the University of Utah Telescope Array group.

Agenda: NSF will provide the Zoom coordinates for each meeting (All times are Eastern Daylight Time (EDT)).

June 13, 2022

10:30 a.m.–11:00 a.m.—Executive Session (Closed)
11:00 a.m.–5:00 p.m.—Presentations on the Telescope Array Physics Data Analysis (Open)
5:00 p.m.–6:00 p.m.—Executive Session (Closed)
6:00 p.m.–6:30 p.m.—Closeout presentation by Review Panel (Open)

June 14, 2022

10:30 a.m.–11:00 a.m.—Executive Session (Closed)
11:00 a.m.–5:00 p.m.—Presentations on the Telescope Array Operations (Open)
5:00 p.m.–6:00 p.m.—Executive Session (Closed)
6:00 p.m.–6:30 p.m.—Closeout presentation by Review Panel (Open)

June 15, 2022

10:30 a.m.–11:00 a.m.—Executive Session (Closed)
11:00 a.m.–12:00 p.m.—Discussion with the Project (Open)
12:00 p.m.–5:00 p.m.—Executive Session (Closed)
5:00 p.m.–6:30 p.m.—Closeout presentation by Review Panel (Open)

Reason for Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C.552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–10623 Filed 5–17–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Revise an Information Collection System

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments on this notice must be received by July 18, 2022, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7465, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Reporting Requirements for the National Science Foundation (NSF) Innovation Corps (I-Corps) Hubs Program.

OMB Number: 3145–0258.

Expiration Date of Approval: August 31, 2024.

Type of Request: Intent to seek approval on revising an existing information collection.

Abstract:

Proposed Project

The National Science Foundation (NSF) Innovation Corps (I-Corps™), herein known as I-Corps program, was established at NSF in Fiscal Year (FY) 2012 to equip scientists with the entrepreneurial tools needed to transform discoveries with commercial realization potential into innovative technologies. The goal of the I-Corps Program is to use experiential education to help researchers reduce the time necessary to translate a promising idea from the laboratory to the marketplace. In addition to accelerating technology translation, NSF seeks to reduce the risk associated with technology development conducted without insight into industry requirements and challenges. The I-Corps Program uses a lean startup approach to encourage scientists to think like entrepreneurs through intensive workshop training and ongoing support.

In FY 2017, the American Innovation and Competitiveness Act (AICA), Public Law 114–329, Sec. 601, formally authorized and directed the expansion of NSF I-Corps Program to increase the economic competitiveness of the United States, enhance partnerships between academia and industry, develop an American STEM workforce that is globally competitive, and support female entrepreneurs and individuals from historically underrepresented groups in STEM through mentorship, education, and training.

Under AICA, NSF has built and expanded the I-Corps Program through the National Innovation Network (NIN) model. NIN is a collection of NSF I-Corps Nodes and Sites that, together with NSF, implement the I-Corps program to grow and sustain the national innovation ecosystem. I-Corps Nodes are typically large, multi-institutional collaborations that deliver the NSF National I-Corps Teams training curriculum and recruit and train the National I-Corps instructors. I-Corps Sites are entrepreneurial centers located at individual colleges and universities that catalyze potential I-Corps teams within their local institutions. Together, the Nodes and Sites have served as the backbone of the NIN.

In 2020, NSF published the Program Solicitation, NSF 20–529, to formalize the launching of the NSF I-Corps Hubs Program, which further expands and strengthens the NIN. The I-Corps Hubs are designed to support inclusive, regional communities of innovators, in that teams are encouraged to recruit diverse members at all levels. In addition, the I-Corps Hubs Program also provides new pathways for teams to qualify for the participation in the National I-Corps ™ Teams program. Through the I-Corps Hubs solicitation, NSF seeks to evolve the current NIN structure, into a more integrated model capable of sustained operation at the scope and scale required to support the expansion of the NSF I-Corps Program as directed by AICA.

Under AICA, NSF is directed to collect data and information pertaining to the characteristics, outputs, and outcomes from the teams as well as individuals funded by the NSF I-Corps™ Program. The collection of this information will enable the evaluation of and reporting on the four themes as outlined in the FY 2021 NSF I-Corps Biennial Report to Congress:

1. Technology Translation
2. Entrepreneurial Training and Workforce Development
3. Economic Impact
4. Collaboration and Inclusion

Recently, NSF published a new I-Corps Hubs Solicitation, NSF 22–566, that supplants the now archived NSF 20–529. The new solicitation contains a set of modified grantee reporting requirements. In response to these modifications, NSF requests the revision of the previously cleared grantee reporting requirements under 3145–0258 to reflect the updates in NSF 22–566. NSF will modify the awards made under NSF 20–529 to comply with the new reporting requirements outlined in NSF 22–566 once this Paperwork Reduction Act request is approved by the OMB.

Under the new reporting requirements outlined in NSF 22–566, each Hub is required to provide data and

documentation to demonstrate the progress of the six (6) required activities:

1. Team Expansion
2. I-Corps Training
3. Institutional Expansion of the Hub
4. Evaluation of Hubs
5. Entrepreneurial Research
6. Broadening Participation

More concretely, each Hub is asked to report on the following:

1. Results from surveys that were designed to track the entrepreneurial progress of Program Participants
2. Results from a survey gauging the level of Participants' satisfaction with the Program (customer feedback)
3. Records on the Hub:
   a. Institution name
   b. Role (Lead or Partner)
   c. Year joined the Hub
4. Records on the personnel working at the Lead and Partner institutions within the Hub:
   a. Name
   b. Role (Director, Coordinator, Evaluation Lead, etc)
   c. Contact Information for each individual in 4.a
5. Records on cohorts of teams trained during a FY:
   a. Date
   b. Location
6. Records on the instructors by cohort:
   a. Instructor's name
   b. Instructor's affiliation
   c. A brief bio of the instructor
   d. Contact information
7. Records of all the teams and individuals participating in the Program
   a. Teams—
   i. Name of the Team
   ii. Participation Date
   iii. Mentor Assigned
   iv. Contact Information of the Mentor
   b. Participants—
   i. Team Name
   ii. Current occupation (faculty member, student, post-doc, or others)
   iii. Institution Affiliation
   iv. Location (State)
   v. Gender, Demographics, Disability, and Veteran Status
8. Outcomes of the team:
   a. I-Corps National Teams Program Pathway
   i. Whether the team has applied and/or been accepted into the NSF National I-Corps Program
   1. If applicable, the Team Number in the National Program
   b. Funding/Investment records, obtained from third-party subscription data, for the teams or startups that have participated in the Program

The reporting requirements listed above are in addition to the data collected by the agency's annual report and final report requirements for the grantees. The information will help NSF report on NIN activities in the Biennial Report to Congress (as mandated by the AICA), and will provide managing Program Directors a means to monitor the progresses of these I-Corps Hubs. Finally, in compliance with the Evidence Act of 2019, information collected will be used to satisfy other Congressional requests, support the agency's policymaking and internal evaluation and assessment needs, and respond to inquiries from the public, NSF's external merit reviewers who serve as advisors, and NSF's Office of the Inspector General.

Information collected will include the names of the participants, their affiliated organizations, email addresses, and home states. These personal identifiable information (PII) are collected primarily to track recipients in their roles in the I-Corps Teams, and to allow NSF to perform due diligence and quality control on the data provided by the grantees. In addition, other requested information includes the participants' self-reporting of: occupation, gender, demographics, disability status, and veteran status. This information is collected primarily for Congressional reporting purposes. These PII data will be accessed only by the I-Corps Hubs, the managing I-Corps Program Directors, NSF senior management, and supporting staff conducting analyses using the data as authorized by NSF. Any public reporting of data will be in aggregate form, and any personal identifiers will be removed.

Use of the information: The information collected is primarily for the agency's AICA Reporting requirements, and other Congressional requests.

Estimate burden on the public: Estimated to be no more than 240 hours per award, per year, for the life of the award.

Respondents: I-Corps Hubs Grantees (Each Hub reports one set of data on behalf of the Lead and partner institutions of that Hub).

Estimated number of respondents: 5–9.

Frequency: Twice per year for the first year, then once per year thereafter.

Dated: May 13, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–10654 Filed 5–17–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–227]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 20, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also

establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2020–227; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* May 12, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 20, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10673 Filed 5–17–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 18, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 11, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 742 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–59, CP2022–64.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–10657 Filed 5–17–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service ™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 18, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 11, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 741 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–58, CP2022–63.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–10659 Filed 5–17–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94900; File No. SR–OCC–2022–001]

Self-Regulatory Organizations; Options Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

May 12, 2022.

I. Introduction

On January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–001 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to change quantitative models related to certain volatility products.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on February 11, 2022.[4] The Commission has received comments regarding the Proposed Rule Change.[5]

On March 24, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[6] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[7] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 87 FR 8072.

[4] Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2022–801) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on February 11, 2022. Securities Exchange Act Release No. 94166 (Feb. 7, 2022), 87 FR 8063 (Feb. 11, 2022) (File No. SR–OCC–2022–801).

[5] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2022-001/sroccc2022001.htm.* Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

[6] 15 U.S.C. 78s(b)(2).

[7] Securities Exchange Act Release No. 94165 (Feb. 7, 2022), 87 FR 8072 (Feb. 11, 2022) (File No. SR–OCC–2022–001).

Exchange Act,[8] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

OCC is a central counterparty (''CCP''), which means it interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S., as well as for certain futures, OCC is exposed to the risk that one or more of its members may fail to make a payment or to deliver securities. OCC addresses such exposures, in part, by requiring its members to provide collateral, including margin collateral. Margin is the collateral that CCPs, like OCC, collect to cover potential changes in a member's positions over a set period of time. Typically, margin is designed to cover such exposures during normal market conditions, which means that margin collateral should be sufficient to exposures at least 99 out of 100 days.

Margin requirements may fluctuate from day to day; however, CCPs seek to reduce fluctuations that could otherwise impose systemic risk. For example, if a CCP collects too little margin during relatively stable market conditions, then it would need to collect significantly more margin during stressed market conditions. Margin requirements that are strongly reactive to market movements are considered to be ''procyclical.'' By contrast, a CCP may collect slightly more margin during quiet times to reduce the additional strain it places on members during times of market stress.

OCC's process for setting margin requirements considers several distinct risk factors, including volatility. OCC's current models for estimating the impact of volatility on member positions have a number of limitations that may result in procyclical margin requirements. OCC is proposing to change its models to reduce the level of procyclicality in its margin requirements caused by changes in volatility. The changes OCC is proposing would also provide for offsets between products based on the same underlying asset. Based on data provided by OCC, the proposed model changes would likely increase margin requirements slightly overall, which, in turn, would reduce the additional amount of margin OCC would need to collect during periods of market stress.

The proposed changes to OCC's models are a continuation of volatility model changes that OCC has implemented over the past several years. In 2015, the Commission approved OCC's proposal to more broadly incorporate variations in implied volatility in OCC's margin methodology.[9] In 2018, OCC modified its implied volatility model to address issues highlighted by large spikes in volatility.

As described in the Notice of Filing,[10] OCC proposes to change three quantitative models related to certain volatility products. Specifically, OCC proposes the following changes:

(1) Implement a new model for incorporating variations in implied volatility within OCC's margin methodology for products based on the S&P 500 Index;

(2) implement a new model to margin futures on volatility indexes; [11] and

(3) replace OCC's model to for margining variance futures.[12]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [13] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[14] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act,[15] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,[16] which requires, among other things, that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and
- Rule 17Ad–22(e)(2) under the Exchange Act,[17] which requires a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, (1) are clear and transparent,[18] (2) clearly prioritize the safety and efficiency of the covered clearing agency,[19] and (3) support the public interest requirements in Section 17A of the Exchange Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants.[20]
- Rule 17Ad–22(e)(3) under the Exchange Act,[21] which requires a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which, among other things, includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually.[22]
- Rule 17Ad–22(e)(4) under the Exchange Act,[23] which requires a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes.
- Rule 17Ad–22(e)(6) under the Exchange Act,[24] which requires a covered clearing agency establish, implement, maintain, and enforce

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 76781 (Dec. 28, 2015), 81 FR 135 (Jan. 4, 2016) (File No. SR–OCC–2015–016).

[10] *See* Notice of Filing, *supra* note 4.

[11] A volatility index is an index designed to measure the volatiles implied by the prices of options on an underlying index.

[12] A variance future is an exchange-traded futures contract based on the expected realized variance of an underlying interest.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] *Id.*

[15] 15 U.S.C. 78q–1.

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(e)(2).

[18] 17 CFR 240.17Ad–22(e)(2)(i).

[19] 17 CFR 240.17Ad–22(e)(2)(ii).

[20] 17 CFR 240.17Ad–22(e)(2)(iii).

[21] 17 CFR 240.17Ad–22(e)(3).

[22] 17 CFR 240.17Ad–22(e)(3)(i).

[23] 17 CFR 240.17Ad–22(e)(4).

[24] 17 CFR 240.17Ad–22(e)(6).

written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, among other things, (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market [25] (2) calculates sufficient margin to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; [26] and uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[27]

• Rule 17Ad–22(e)(23) under the Exchange Act,[28] which requires a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for, among other things, sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.[29]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Exchange Act,[30] Rule 17Ad–22(e)(6) under the Exchange Act,[31] or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4(g) under the Exchange Act,[32] any request for an opportunity to make an oral presentation.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by June 8, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 22, 2022.

The Commission asks that commenters address the sufficiency of OCC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing,[34] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2022–001 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2022–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2022–001 and should be submitted on or before June 8, 2022. Rebuttal comments should be submitted by June 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10616 Filed 5–17–22; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 240.17Ad–22(e)(6)(i).

[26] 17 CFR 240.17Ad–22(e)(6)(iii).

[27] 17 CFR 240.17Ad–22(e)(6)(v).

[28] 17 CFR 240.17Ad–22(e)(23).

[29] 17 CFR 240.17Ad–22(e)(23)(ii).

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 17 CFR 240.17Ad–22(e)(6).

[32] 17 CFR 240.19b–4(g).

[33] Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[34] *See* Notice of Filing, *supra* note 4.

[35] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94902; File No. SR–NYSEArca–2022–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the IQ Winslow Large Cap Growth ETF and IQ Winslow Focused Large Cap Growth ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)

May 12, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 5, 2022, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 list and trade shares of the following under NYSE Arca Rule 8.601–E: IQ Winslow

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Large Cap Growth ETF and IQ Winslow Focused Large Cap Growth ETF. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[4] Commentary .01 to Rule 8.601–E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of Active Proxy Portfolio Shares of the IQ Winslow Large Cap Growth ETF and IQ Winslow Focused Large Cap Growth ETF (each a ''Fund'' and, collectively, the ''Funds'') under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E[5] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[6] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the ''1940 Act'').[7] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares. As set forth in NYSE Arca Rule 8.601–E(d)(2)(B)(ii), for Active Proxy Portfolio Shares using a Custom Basket, each Business Day,[8] before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E (a)), the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

The Commission has previously approved[9] and noticed for immediate

[4] *See* Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95). Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Rule 8.601–E(c)(3) provides that ''[t]he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.'' Rule 8.601–E(c)(4) provides that the term ''Custom Basket'' means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

[5] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[6] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[7] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[8] ''Business Day'' is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

[9] *See* Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active

Continued

effectiveness [10] the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares of the Funds will be issued by the IndexIQ Active ETF Trust (the ''Trust''), which is organized as a statutory trust under the laws of the state of Delaware and registered with the Commission as an open-end management investment company.[11]

IndexIQ Advisors LLC will be the investment advisor to the Funds (the ''Advisor''). Winslow Capital Management, LLC will be the sub-advisor (the ''Sub-Advisor'') for the Funds. The Bank of New York Mellon will serve as the Funds' custodian (the ''Custodian'') and transfer agent. ALPS Distributors, Inc. will act as the distributor (the ''Distributor'') for the Funds.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[12] Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

The Advisor and Sub-Advisor are not registered as broker-dealers but are affiliated with broker-dealers. The Advisor and Sub-Advisor have implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E) (the ''Natixis Order''); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E). *See also* Securities Exchange Act Release Nos. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

[10] *See* Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); and 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR–NYSEArca–2021–84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Schwab Ariel ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares).

[11] The Trust is registered under the 1940 Act. On December 29, 2021 the Trust filed a registration statement on Form N–1A under the 1940 Act relating to the Funds (File No. 811–22379) (the ''Registration Statement''). The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15294), dated December 29, 2021 and amended on March 14, 2022 (the ''Application''). *See* Investment Company Act Release No. 34554 (April 4, 2022). On April 29, 2022, the Commission issued an order (the ''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34574, April 29, 2022). Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement, Application, and Exemptive Order. The Exchange will not commence trading in Shares of the Funds until the Registration Statement is effective.

[12] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Advisor and Sub-Advisor and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

In the event (a) the Advisor or Sub-Advisor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a ''fire wall'' with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Any person related to the Advisor, Sub-Advisor, or the Funds who makes decisions pertaining to a Fund's Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or has access to non-public information regarding a Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable or changes thereto.

In addition, any person or entity, including any service provider for the Funds, who has access to non-public information regarding a Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to a Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Description of the Funds

According to the Registration Statement, the Advisor will identify a Proxy Portfolio for each Fund, which is designed to recreate the daily performance of each Fund's Actual Portfolio through a factor model analysis of the Fund's Actual Portfolio and will only include securities and investments in which a Fund may invest. However, while the Proxy Portfolio and the Actual Portfolio will likely hold some or many of the same securities, the Proxy Portfolio and a Fund's Actual Portfolio may not include identical securities. The composition of each Fund's Proxy Portfolio will be published on the Funds' website (*newyorklifeinvestments.com*) each Business Day and will include the following information for each portfolio holding in each Fund's Proxy Portfolio: (1) Ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Proxy Portfolio will be reconstituted daily, and the Advisor will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio.

At the end of each trading day, each Fund will calculate the percentage weight overlap between its Proxy Portfolio and Actual Portfolio (the ''Proxy Overlap'') and the standard deviation over the past three months of the daily proxy spread (*i.e.,* the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio at the end of the trading day) (the ''Tracking Error'') and publish such information on the Funds' website before the opening of trading each Business Day.

IQ Winslow Large Cap Growth ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[13] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is long-term growth of capital. The Fund will, under normal circumstances, invest at least 80% of its assets in large capitalization companies.[14] The Fund will typically invest in domestic securities but is permitted to invest up to 20% of its net assets in depositary receipts issued by a trust (including ADRs) of foreign securities and in common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares. The Fund will invest in companies that the Sub-Advisor believes will provide an opportunity for achieving superior portfolio returns (*i.e.,* returns in excess of the returns of the average stock ETF or mutual fund) over the long term or have the potential for above-average future earnings and cash flow growth with management focused on shareholder value.

IQ Winslow Focused Large Cap Growth ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[15] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is long-term capital growth. The Fund will, under normal circumstances, invest at least 80% of its assets in large capitalization companies.[16] The Fund will typically invest in domestic securities but is permitted to invest up to 20% of its net assets in depositary receipts issued by a trust (including ADRs) of foreign securities and in common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares. The Fund will normally invest in a limited number of issuers and hold a core position of between 25 and 35

[13] Pursuant to the Application and Exemptive Order, the permissible investments for the Funds include only the following instruments: ETFs traded on a U.S. exchange; exchange-traded notes (''ETNs'') traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (''foreign common stocks'') in the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. Eastern time (''E.T.'')); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (''ADRs''); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with the Funds' Shares. In addition, the Funds may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Funds will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

[14] According to the Registration Statement, large capitalization companies are companies having a market capitalization in excess of $4 billion at the time of purchase.

[15] *See* note 13, *supra.*

[16] *See* note 14, *supra.*

securities. The Fund will invest in companies that the Sub-Advisor believes will provide an opportunity for achieving superior portfolio returns (*i.e.,* returns in excess of the returns of the average stock ETF or mutual fund) over the long term or have the potential for above-average future earnings and cash flow growth with management focused on shareholder value.

Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under Rule 8.601–E. The Funds' holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.[17]

The Funds' investments, including derivatives, will be consistent with their investment objectives and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of such Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[18]

Purchases and Redemptions

According to the Registration Statement, the Trust will issue and sell Shares of the Funds only in specified minimum size ''Creation Units'' on a continuous basis on any Business Day through the Distributor at their NAV next determined after receipt of an order in proper form. The NAV of each Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. E.T. A Creation Unit will consist of at least 10,000 Shares.

According to the Registration Statement, Shares of the Funds will be purchased and redeemed in Creation Units. Creation Units will typically be purchased in-kind through the deposit of a designated portfolio of securities constituting a representation of the Fund's portfolio (the ''Deposit Securities'') together with the deposit of a specified cash payment (the ''Cash Component'') (collectively, the ''Fund Deposit''). The Cash Component serves to compensate for any differences between the NAV per Creation Unit and the ''Deposit Amount,'' which is an amount equal to the market value of the Deposit Securities. In addition, the Trust may permit or require the substitution of an amount of cash (the ''cash in lieu'' amount) to be added to the Cash Component to replace any Deposit Security. The names and quantities of the instruments that constitute the Deposit Securities will be the same as a Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis. Creation Units will typically be redeemed in exchange for ''Fund Securities'' (which may not be identical to the Deposit Securities) and a ''Cash Redemption Amount,'' which represents the difference between the NAV of the Shares being redeemed and the value of the Fund Securities.

Creation Units of the Funds may be purchased and/or redeemed entirely or partially for cash in the Advisor's or Sub-Advisor's discretion. When full or partial cash purchases or redemptions of Creation Units are available or specified for the Funds, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof. The Funds may determine, upon receiving a purchase or redemption order from an Authorized Participant,[19] to have the purchase or redemption, as applicable, be made entirely or in part in cash.[20]

The identity and number of shares of the Deposit Securities required for a Fund Deposit may change from time to time. Each Business Day, prior to the opening of business on the Exchange, the Custodian will make available, through the National Securities Clearing Corporation, the names and quantities of each Deposit Security to be included in the Fund Deposit, as well as the estimated Cash Component. The published Fund Deposit will apply until such time as the next-announced composition of the Deposit Securities is made available, and there will be no intra-day changes except to correct errors in the published Fund Deposit. The Fund Deposit will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis. The identity of the Fund Securities that will be applicable to redemption requests received in proper form on a Business Day will also be made available prior to the opening of business on the Exchange on each Business Day.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant. Orders to purchase or redeem Creation Units will be accepted until the ''Order Time,'' generally 3:00 p.m. E.T. The date on which an order to purchase or redeem Creation Units is placed is referred to as the ''Transmittal Date.'' All Creation Unit orders must be received by the Distributor no later than the Order Time in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, a Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Funds' website (*newyorklifeinvestments.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' website will include on a daily basis, per Share for each Fund: (1) The prior Business Day's NAV; (2) the prior Business Day's ''Closing Price'' or ''Bid/Ask Price''; [21] and (3) a calculation of the premium/discount of such Closing Price or Bid/Ask Price against such NAV.[22] The Advisor has represented that the Funds' website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The Funds' website also will disclose the information required under Rule 8.601–E(c)(3).[23] The website and information will be publicly available at no charge.

[17] *See* note 13, *supra.*

[18] Each Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Funds' first full calendar year of performance.

[19] According to the Registration Statement, an ''Authorized Participant'' is an institution that may engage in creation and redemption transactions directly with the Funds.

[20] The Advisor represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with the Funds on that day.

[21] The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of each Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[22] The ''premium/discount'' refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price on a given trading day.

[23] *See* note 4, *supra.* Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

The identity and quantity of investments in the Proxy Portfolio for each Fund will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and Tracking Error for each Fund, as discussed above. With respect to each Custom Basket utilized by the Funds, each Business Day, before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E (a)), the Funds' website will also include the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis.[24] Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Funds' SAI, Shareholder Reports, Form N–CSR, N–PORT, and Form N–CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to the Application, the Funds must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (''CTA'') high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[25] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that (i) the NAV per Share of each Fund will be calculated daily, (ii) the NAV, Proxy Portfolio, and the Actual Portfolio for each Fund will be made publicly available to all market participants at the same time, and (iii) the Trust and any person acting on behalf of the Trust will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[26] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

[24] *See* note 7, *supra.*

[25] *See* NYSE Arca Rule 7.12–E.

[26] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[27]

The Advisor will make available daily to FINRA and the Exchange the Actual Portfolio of each Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Funds, that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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.[30]

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E.

The Funds' holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[31]

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Funds will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Closing Price or Bid/Ask Price and NAV.

The Funds' investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Funds' investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or

[27] For a list of the current members of ISG, *see www.isgportal.org.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] The Exchange represents that, for initial and continued listing, the Funds will be incompliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

[31] *See* note 13, *supra.*

–3X) of the Funds' primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of each Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for each Fund will be made available to all market participants at the same time. Investors can obtain the Funds' SAI, shareholder reports, and its Form N–CSR, Form N–PORT, and Form N–CEN. The Funds' SAI and shareholder reports will be available free upon request from the Funds, and those documents and the Form N–CSR, Form N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Funds, the Advisor will make available daily to FINRA and the Exchange the portfolio holdings of each Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Funds will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The identity and quantity of investments in the Proxy Portfolio will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601–E.[32]

The Funds' holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[33] Any foreign common stocks held by the Funds will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Advisor, prior to commencement of trading in the Shares of the Funds, that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of additional actively-managed ETFs that have characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

[32] *See* note 4, *supra.*

[33] *See* note 13, *supra.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [36] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Commission has approved and noticed for immediate effectiveness proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Fund.[37] The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[38]

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.

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–NYSEArca–2022–29 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–NYSEArca–2022–29. 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–NYSEArca–2022–29 and should be submitted on or before June 8, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Matthew DeLesDernier,

Assistant Secretary.

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[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] *See supra* notes 9 and 10.

[38] 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).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94897; File No. SR–ISE–2022–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration

May 12, 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 April 27, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the following sections within Options 5, Order Protection and Locked and Crossed Markets: Section 2, Order Protection; Section 3, Locked and Crossed Markets; and Section 4, Order Routing to Other Exchanges.

Additionally, the Exchange proposes to make corresponding amendments to the following sections within Options 3, Options Trading Rules: Section 5, Entry and Display of Single-Leg Orders; Section 7, Types of Orders and Order and Quote Protocols; Section 9, Trading Halts; Section 10, Priority of Quotes and Orders; and Section 11, Auction Mechanisms. Also, amendments are proposed to the following sections within Options 7, Pricing Schedule: Section 1, General Provisions; Section 3, Regular Order Fees and Rebates; and Section 6, Other Options Fees and Rebates.

[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/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

In connection with a technology migration to an enhanced Nasdaq, Inc. (''Nasdaq'') functionality which results in higher performance, scalability, and more robust architecture, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. Specifically, the Exchange proposes to conform the routing functionality available on ISE to that of Nasdaq BX, Inc.[3] The Exchange proposes to amend the following sections within Options 5, Order Protection and Locked and Crossed Markets: Section 2, Order Protection; Section 3, Locked and Crossed Markets; and Section 4, Order Routing to Other Exchanges. Additionally, the Exchange proposes to make corresponding amendments to the following sections within Options 3, Options Trading Rules: Section 5, Entry and Display of Single-Leg Orders; Section 7, Types of Orders and Order and Quote Protocols; Section 9, Trading Halts; Section 10, Priority of Quotes and Orders; and Section 11, Auction Mechanisms, to account for the proposed amendments to Options 5. Also, amendments are proposed within the following sections of Options 7, Pricing Schedule: Section 1, General Provisions; Section 3, Regular Order Fees and Rebates; and Section 6, Other Options Fees and Rebates.

Today, ISE Options 5 describes how ISE routes orders in options via Nasdaq Execution Services, LLC (''NES'')[4] to away markets. Utilizing NES to route orders to away markets is optional. Today, Members may elect to not route orders through NES and designate those orders as Do-Not-Route-Orders pursuant to Options 5, Section 4(b).[5] In the event that NES cannot provide Routing Services, the Exchange will cancel orders that, if processed by the Exchange, would violate Options 5, Section 2 (prohibition on trade-throughs) or Options 5, Section 3 (prohibition on locked and crossed markets).[6] Further, ISE Options 5 describes the manner in which ISE may route to another exchange via an Intermarket Sweep Order (''ISO'')[7] under certain circumstances.[8]

Pursuant to Supplementary Material .02 to Options 5, Section 2, ISE permits certain orders to first be exposed at the NBBO to all Members for execution at the National Best Bid or Offer (''NBBO'') before the order would be routed to another market for execution (''flash functionality''). Currently, with respect to flash functionality, when an incoming order is priced at or through the Away Best Bid or Offer (''ABBO''), when the ABBO is better than the Exchange Best Bid or Offer (''BBO''), such order is exposed at the current NBBO to all Exchange Members for a period of time established by the Exchange not to exceed one (1) second. During the exposure period, Exchange Members may enter responses up to the size of the order being exposed in the regular trading increment applicable to the option.[9] If at the end of the exposure period, the order is executable at the then-current NBBO and ISE is not at the then-current NBBO, responses that equal or better the NBBO will be executed in price priority, and at the same price, allocated pro-rata based on size, after Priority Customer orders are allocated.[10] If during the exposure period, the order becomes executable on ISE at the prevailing NBBO, the exposure period will be terminated, and the order will be executed against orders and quotes on the order book and responses received during the exposure period.[11] If during the exposure period the Exchange receives an unrelated order on the opposite side of the market from the exposed order that could trade against the exposed order at the prevailing NBBO price, the exposure period will be terminated and the orders will be executed.[12] If after an order is exposed, the order cannot be executed in full on the Exchange at the then-current NBBO or better, and it is marketable, the lesser of the full displayed size of the Protected Bid(s) or Protected Offer(s) that are priced better than ISE's quote or the balance of the order will be sent to NES and any additional balance will be executed on ISE if it is marketable.[13] Any additional

[3] GEMX and MRX incorporate ISE Options 5 by reference.

[4] NES is a broker-dealer and the Routing Facility of the Exchange. NES routes orders in options listed and open for trading on the System to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to Exchange Rules on behalf of the Exchange. NES is subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Securities Exchange Act of 1934, as amended. *See* Options 5, Section 4(a).

[5] A do-not-route order is a market or limit order that is to be executed in whole or in part on the Exchange only. Due to prices available on another options exchange (as provided in Options 5 (Order Protection; Locked and Crossed Markets)), any balance of a do-not-route order that cannot be executed upon entry, or placed on the Exchange's limit order book, will be automatically cancelled. *See* Options 3, Section 7(m).

[6] *See* Supplementary Material .02 to Options 5, Section 4.

[7] Options 5, Section 1(h) provides, ''Intermarket Sweep Order (''ISO'')'' means a limit order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO. A Member may submit an Intermarket Sweep Order to the Exchange only if it has simultaneously routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the Intermarket Sweep Order. An ISO may be either an Immediate-Or-Cancel Order or an order that expires on the day it is entered.''

[8] *See* Supplementary Material .01 and .07 to Options 5, Section 2.

[9] If a trading halt is initiated during the exposure period, the exposure period will be terminated without execution. *See* Supplementary Material .02 to Options 5, Section 2.

[10] The percentage of the total number of contracts available at the same price that is represented by the size of a Member's response. *See* Supplementary Material .02(a) to Options 5, Section 2.

[11] Such interest will be executed in price priority. At the same price, Priority Customer Orders will be executed first in time priority and then all other interest (orders, quotes and responses) will be allocated pro-rata based on size. *See* Supplementary Material .02(b) to Options 5, Section 2.

[12] *See* Supplementary Material .02(c) to Options 5, Section 2.

[13] Supplementary Material .06 to Options 5, Section 2 provides that in addressing Public Customer orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange pursuant to the Supplementary Material of Options 5, Section 2, the Exchange will act in compliance with its rules and with the provisions of the Exchange Act and the rules thereunder, including, but not limited to, the requirements in Section (6)(b)(4) and (5) of the Exchange Act that the rules of national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and issuers and

Continued

balance of the order that is not marketable against the then-current NBBO will be placed on ISE's order book.[14] A Do-Not-Route Order that meets the criteria for the flash order functionality will also be exposed. If the Do-Not-Route Order cannot be executed in full on the Exchange at the then-current NBBO or better, the balance of the order will be placed on ISE's order book if it is not marketable against the then-current NBBO, or the balance of the order will be cancelled.

Today, Non-Customer orders[15] may opt out of being processed in accordance with Supplementary Material .02 of Options 5, Section 2.[16] If a Non-Customer opts out, when the automatic execution of an incoming Non-Customer order would result in an impermissible Trade Through, and it is marketable, the lesser of the full displayed size of the Protected Bid(s) or Protected Offer(s) that are priced better than ISE's quote or the balance of the order will be sent to NES and any additional balance of the order will be executed on ISE if it is marketable. Any additional balance of the order that is not marketable against the then-current NBBO will be placed on ISE's order book.[17]

Today, Sweep Orders[18] will not be processed in accordance with Supplementary Material .02 of this Options 5, Section 2. Rather, when the automatic execution of an incoming Sweep Order would result in an impermissible Trade Through, and it is marketable, the lesser of the full displayed size of the Protected Bid(s) or Protected Offer(s) that are priced better than ISE's quote or the balance of the order will be sent to NES and any additional balance of the order will be executed on ISE if it is marketable. Any portion of the order not executed shall be cancelled.[19] If a Sweep Order is not marketable when it is submitted to the Exchange, it shall be cancelled.[20]

Proposal

The Exchange proposes to amend ISE's order routing functionality to conform to that of BX Options 5, Section 4. As part of the technology migration, Nasdaq seeks to conform certain trading functionality to functionality currently available on other Nasdaq affiliated options markets to create a similar routing experience for market participants across the Nasdaq options markets. Similar to BX, ISE would continue to route orders to away markets via NES. Similar to BX, ISE would offer the following order types for routing: DNR Order, FIND Order and SRCH Order. Each order type for routing will be explained below.

ISE would no longer offer flash functionality because the proposed routing functionality, similar to BX, would permit an order to be exposed for a period of time that would allow other Members to trade with the order prior to the order routing to an away market. ISE proposes to remove the rule text related to flash functionality within Supplementary Material .02 to Options 5, Section 2.

Sweep Orders were adopted on ISE in 2014, to supplement ISE's away market routing capabilities.[21] Sweep Orders do not enter the flash functionality process of Supplementary Material .02 of Options 5, Section 2 and are processed separately. This proposal would eliminate the Sweep Order type within Options 3, Section 7(s) and remove the Sweep Order routing discussion within Supplementary Material .05 to Options 5, Section 2. Sweep Orders are not necessary to facilitate the routing of Public Customer and Non-Customer orders to away markets because the proposed routing functionality would route all orders to away markets uniformly. Additionally, uniformly, all orders would be subject to re-pricing if the order would otherwise lock or cross an away market. The Exchange would continue to not cancel marketable orders that could not be executed on ISE because the order would lock or cross an away market, rather the order would be re-priced with the new routing functionality.

With the new routing process, a Route Timer would begin for each order that is subject to routing on the Exchange. While Members may not opt out of the Route Timer, as is the case today, the proposed routing process would create a uniform streamlined process for routing all orders (FIND and SRCH) where a market participant has elected to have an order routed; Member may continue to elect to not have their orders routed. The new routing process does not distinguish as between Public Customer orders and Non-Customer orders, rather all orders would be processed in the same manner. Further, the proposed routing process would serve to further harmonize routing across Nasdaq affiliated markets.

The Exchange also proposes to remove Supplementary Material .04 to Options 5, Section 2, which sets forth routing procedures for Non-Customer orders that opt out of being processed under the flash functionality. The Exchange has proposed to replace its current away routing regime with the proposed FIND and SRCH order routing types. The processing of Sweep Orders and the routing procedures under Supplementary Material .04 to Options 5, Section 2 were established as alternative routing procedures to the flash functionality and because the Exchange proposes to eliminate the flash order functionality, these routing procedures are no longer needed under the proposed routing procedures.

Finally, the rule text within Supplementary Material .06 to Options 5, Section 2,[22] relating to Public Customer orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange, would be removed as handling of Public Customer orders is being amended to conform to BX Options 4 handling. The Exchange will explain that handling below. The rule text within Supplementary Material .06 to Options 5, Section 2 was adopted in 2009 when ISE adopted new rules to implement the Options Order Protection and Locked/Crossed Market Plan.[23] ISE

other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[14] *See* Supplementary Material .02(d) to Options 5, Section 2.

[15] The term ''Non-Customer'' means a person or entity that is a broker or dealer in securities. *See* Options 1, Section 1(a)(24).

[16] *See* Supplementary Material .04 to Options 5, Section 2.

[17] *See* Supplementary Material .04(a) to Options 5, Section 2.

[18] A Sweep Order is a limit order that is to be executed in whole or in part on the Exchange and the portion not so executed shall be routed pursuant to Supplementary Material .05 to Options 5, Section 2 to Eligible Exchange(s) for immediate execution as soon as the order is received by the Eligible Exchange(s). Any portion not immediately executed by the Eligible Exchange(s) shall be canceled. If a Sweep Order is not marketable when it is submitted to the Exchange, it shall be canceled. *See* Options 3, Section 7(s).

[19] *See* Supplementary Material .05(a) to Options 5, Section 2.

[20] *See* Supplementary Material .05(b) to Options 5, Section 2.

[21] *See* Securities Exchange Act Release No. 72816 (August 12, 2014), 79 FR 48811 (August 18, 2014) (SR–ISE–2014–37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change on Non-Customer Linkage and Sweep Orders). Prior to the introduction of Sweep Orders, the Exchange only routed Public Customer orders to away markets and cancelled any marketable Non-Customer orders that could not be executed on the ISE in compliance with the Options Order Protection and Locked/Crossed Market Plan. Sweep Orders were intended to facilitate the routing of Public Customer and Non-Customer orders to away markets.

[22] *See* note 13 above.

[23] *See* Securities Exchange Act Release No. 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009) (SR–ISE–2009–27) (Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Adopt Rules Implementing the

continues to be subject to compliance with its Rules, the Act, and the rules thereunder, including Sections 6(b)(4) and (5) of the Act [24] which require the Exchange to: (1) Provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and other persons using its facilities; and (2) prohibit unfair discrimination among customers, issuers, brokers or dealers. As noted in the Approval Order to SR–ISE–2009–27, Customers may choose to avoid having their orders routed away by entering their order with an Immediate-or-Cancel [25] or Fill-or-Kill designation [26] in addition to the DNR functionality.

The Exchange proposes to remove the Supplementary Material to Options 5, Section 3 [27] which describes how an order would be handled when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation because that functionality is being amended with this filing. Specifically, today, the order would be handled in accordance with the provisions of Supplementary Material .02, .04 or .05 to Options 5, Section 2, as applicable. The Exchange's proposal removes Supplementary Material .02, .04 and .05 to Options 5, Section 2, therefore this section would no longer be possible as the current order handling is being amended with this proposal.

The Exchange also proposes to make certain conforming amendments within Options 3. First, the Exchange proposes to remove rule text within Options 3, Section 5(b)(1) which relates to flash functionality. Options 3, Section 5(b)(1) provides, ''Orders that are not automatically executed will be handled as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-Customer order should instead be accepted and immediately canceled automatically by the System at the time of receipt.'' This rule text would no longer be necessary as the flash functionality is being eliminated.

The Exchange also proposes to renumber Options 3, Section 5(b)(2) as Options 3, Section 5(b)(1).

The Exchange proposes to amend Options 3, Section 9, Trading Halts, at subparagraph (d)(2). Among other things, the trading halt rule describes the processing of Market Orders exposed at the NBBO pursuant to Supplementary Material. 02 to Options 5, Section 2 after a trading halt. This rule text is no longer necessary with the elimination of flash functionality.

The Exchange also proposes to amend Options 3, Section 10(a)(ii) [28] to remove a reference to the flash functionality that is being eliminated. The Exchange also proposes to renumber Options 3, Section 10(a)(i) and (ii) as Options 3, Section 10(a)(1) and (2) to conform the numbering in that rule and correct a citation within Options 3, Section 10(c)(1)(B)(i)(b) from subparagraph (a)(1)(E) to subparagraph (c)(1)(E). The Exchange proposes to amend Options 3, Section 11(g) [29] to remove a reference to the flash functionality that is being eliminated.

Finally, the Exchange proposes to amend Options 7, Pricing Schedule, to remove all references to pricing related to the flash functionality. This would include the description of a Flash Order [30] within Options 7, Section 1, General Provisions; the pricing for Flash Orders within Options 7, Section 3, Regular Order Fees and Rebates; [31] and the waiver of the Marketing Fee for Flash Orders within Options 7, Section 6, Other Options Fees and Rebates.[32]

The Exchange proposes to re-title Options 5, Section 4 as ''Order Routing'' similar to BX Options 5, Section 4. Proposed new Options 5, Section 4(a) defines various terms similar to BX such as ''exposure'' and ''exposing'', except for terms specific to ISE such as utilizing ''Member'' instead of ''Participant'' and not capitalizing the term ''Order Book''.[33]

As noted above, the Exchange proposes to offer 2 new routing strategies, FIND and SRCH, as well as an option to ''Do Not Route'' or ''DNR.'' Additionally, the Exchange proposes to amend Options 3, Section 7 to add a new Supplementary Material .04 that provides, ''Routing Strategies. Orders may be entered on the Exchange with a routing strategy of FIND or SRCH, or, in the alternative, an order may be marked Do-Not-Route (''DNR'') as provided in Options 5, Section 4 through FIX only.'' The addition of this sentence will make clear which routing strategies may be utilized when submitting an order type and it will provide a citation to the routing rule for ease of reference. Routing options may be combined with all available order types and times-in-force, with the exception of order types

Options Order Protection and Locked/Crossed Market Plan).

[24] 15 U.S.C. 78f(b)(4) and (5).

[25] An immediate-or-cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An immediate-or-cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the (i) Limit Order Price Protection and Size Limitation Protection as defined in Options 3, Section 15(b)(2) and (3); or (ii) Limit Order Price Protection as defined in Supplementary Material .07(d) to Options 3, Section 14. *See* Options 3, Section 7(b)(3).

[26] A fill-or-kill order is a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. *See* Options 3, Section 7(b)(2).

[27] Supplementary Material .01 to Options 5, Section 3 provides, ''When the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order shall be handled in accordance with the provisions of Supplementary Material .02, .04 or .05 to Options 5, Section 2, as applicable.''

[28] Options 3, Section 10(a)(ii) provides, ''Applicability. This rule does not apply to the Block Order Mechanism described within Options 3, Section 11(a), the Facilitation Mechanism described within Options 3, Section 11(b), the Solicited Order Mechanism described within Options 3, Section 11(d), the Price Improvement Mechanism described within Options 3, Section 13, orders described within Options 3, Section 12 or an exposure period *as provided in Options 5, Section 2 at Supplementary Material .02,* unless Options 3, Section 10 is specifically referenced within ISE Rules applicable to the aforementioned functionality.''

[29] Options 3, Section 11(g) provides, ''Concurrent Complex Order and single leg auctions. An auction in the Block Order Mechanism at Options 3, Section 11(a), Facilitation Mechanism at Options 3, Section 11(b), Solicited Order Mechanism at Options 3, Section 11(d), or Price Improvement Mechanism at Options 3, Section 13(d), respectively, *or an exposure period as provided in Supplementary Material .02 to Options 5, Section 2,* for an option series may occur concurrently with a Complex Order Exposure Auction at Supplementary Material .01 to Options 3, Section 14, Complex Facilitation Auction at Options 3, Section 11(c), Complex Solicited Order Auction at Options 3, Section 11(e), or Complex Price Improvement Mechanism auction at Options 11, Section 13(e), respectively, for a Complex Order that includes that series. To the extent that there are concurrent Complex Order and single leg auctions involving a specific option series, each auction will be processed sequentially based on the time the auction commenced. At the time an auction concludes, including when it concludes early, the auction will be processed pursuant to Options 3, Section 11(a), (b), (d), or Section 13(a) *or Supplementary Material .02 to Options 5, Section 2,* as applicable, for the single option, or pursuant to Supplementary Material .01 to Options 3, Section 14, Options 3, Section 11(c), 11(e), Options 3, Section 13(e), as applicable, for the Complex Order, except as provided for at Options 3, Section 13(e)(4)(vi).''

[30] A ''Flash Order'' is an order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to Options 5, Section 2. Unless otherwise noted in Section 3 pricing, Flash Orders will be assessed the applicable ''Taker'' Fee for the initiation of a Flash Order and will be paid/assessed the applicable ''Maker'' Rebate/Fee for responses. *See* Options 7, Section 1.

[31] A market participant's order that initiates a Flash Order will be assessed the appropriate Taker Fee in Section 3. All market participant responses to Flash Orders in Select Symbols will be paid/assessed the appropriate Maker Rebate/Fee in Section 3. Responses to Flash Orders in Non-Select Symbols will be $0.25 per contract for non-Priority Customers and $0.00 for Priority Customers. *See* Options 7, Section 3 at note 17. The Exchange proposes to reserve note 17 within Options 7, Section 3.

[32] Today, Marketing fees are waived NDX, NQX, MNX, Flash Orders and for Complex Orders in all symbols. *See* Options 7, Section 6E.

[33] The Exchange is not defining a ''System Routing Table'' within this rule similar to BX as that term is not utilized elsewhere in the rule.

and times-in-force whose terms are inconsistent with the terms of a particular routing option. Also, the Exchange would remove the current description of ''Do-Not-Route Orders'' within Options 3, Section 7(m).

With respect to order entry protocols, the Exchange notes that FIX [34] is the only order entry protocol on ISE that permits routing. OTTO,[35] another order entry protocol on ISE, does not permit routing.

Proposed Options 5, Section 4(a) provides that the System [36] will route FIND and SRCH Orders with no other contingencies. Of note, Immediate-or-Cancel Orders (''IOC'') will be canceled immediately if not executed, and will not be routed. ISE's System would first check the order book for available contracts for potential execution against the FIND or SRCH Orders. After the System checks the order book for available contracts, orders are sent to other available market centers for potential execution. When checking the order book, the System will seek to execute at the price at which it would send the order to an away market.[37]

The System will initiate a Route Timer for each FIND or SRCH order it receives that locks/crosses an away market price. An order will not route to an away market before the conclusion of the Route Timer which shall not exceed one second and shall begin at the time orders are accepted into the System. At the conclusion of each Route Timer, the System will consider whether an order can be routed. While the Route Timer is running, each order will be exposed [38] on the Nasdaq ISE Order Feed.[39] This exposure allows other Members to interact with the order before it is routed to an away market. If an incoming order is joining an already established BBO price when the ABBO is locked or crossed with the BBO such order will join the established BBO price and no exposure notification will be sent, otherwise a notification will be sent. Also, an order exposure will be sent when the order size is modified. For purposes of this Rule, the Exchange's opening process is governed by Options 3, Section 8 and includes an opening after a trading halt (''Opening Process''). The order routing process would be available to Members from 9:30 a.m. Eastern Time until market close and shall route orders as described within proposed Options 5, Section 4. Finally, all routing of orders shall comply with Options 5, Options Order Protection and Locked and Crossed Market Rules.

With respect to priority when routing as proposed within Options 5, Section 4(a)(i), orders sent to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including,[40] but not limited to, order cancellation. A routed order can be for less than the original incoming order's size. If a routed order is subsequently returned to the Exchange, in whole or in part, that routed order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System, unless any portion of the original order remains on the System, in which case the routed order shall retain its timestamp and its priority.[41] As proposed, the priority when routing is the same as priority described in BX Options 5, Section 4(a)(i).

The Exchange proposes to relocate current Options 5, Section 4(f) into proposed Options 5, Section 4(a)(ii). This is identical to rule text within BX Options 5, Section 4(a)(ii).

The Exchange proposes to remove the following sentence within current Options 5, Section 4, ''The Exchange may automatically route ISOs to other exchanges under certain circumstances, including pursuant to Supplementary Material .02 to Options 5, Section 2 (''Routing Services''). In connection with such services, the following shall apply:.'' This sentence is no longer necessary and is being replaced by proposed Options 5, Section 4(a).

The Exchange proposes to retain the current provisions regarding NES within current Options 5, Section 4(a)–(e) and re-letter those paragraphs (A)–(E) to correspond with lettering within BX Options 5, Section 4 which contains similar rule text. No substantive amendments are proposed to those paragraphs.

The Exchange also proposes to update a citation within new Options 5, Section 4(a)(ii)(B) from Options 3, Section 7(m), which is being reserved, to proposed Options 5, Section 4(a)(iii)(A). Finally, the Exchange proposes to conform a citation to subparagraph (d) to ''D'' within new Options 5, Section 4(a)(ii)(E).

The Exchange proposes to add the new routing order types within proposed Options 5, Section 4(iii). The Exchange proposes to state, ''The following order types are available:''. Of note, a routing option may be combined with all available order types and times-in-force noted within Options 3, Section 7, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option.[42]

The proposed first routing option is a DNR Order. The proposed rule text is substantively the same as BX Options 5, Section 4(iii)(A). The Exchange proposes to describe a DNR Order within proposed Options 5, Section 4(iii)(A). A DNR Order will never be routed outside of the Exchange regardless of the prices displayed by away markets. In order to avoid trading through, a DNR Order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price. If an away market is at a better price, the DNR Order will remain in the Exchange's order book and would display re-priced. Specifically, the Exchange would re-price the DNR Order

[34] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) Execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

[35] ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying and complex instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7.

[36] The term ''System'' means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. *See* Options 1, Section (a)(50).

[37] *See* proposed Options 5, Section 4(a). With respect to Reserve Orders, only the displayed portion of the order would be exposed.

[38] For purposes of this Rule, ''exposure'' or ''exposing'' an order shall mean a notification sent to Members with the price, size, and side of interest that is available for execution. *See* proposed Options 5, Section 4(a).

[39] Nasdaq ISE Order Feed (''Order Feed'') provides information on new orders resting on the book (*e.g.,* price, quantity and market participant capacity). In addition, the feed also announces all auctions. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on ISE and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(2).

[40] Members whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange. *See* proposed Options 5, Section 4(a)(ii).

[41] *See* proposed Options 5, Section 4(a)(i).

[42] *See* proposed Options 5, Section 4(a).

at a price one minimum price variation (''MPV'') inferior to that away best bid/offer. For example, if the DNR Order is locking or crossing the ABBO, the DNR Order shall be entered into the order book at the ABBO price and displayed one MPV away from the ABBO. The Exchange would immediately expose the order at the ABBO to Members, provided the option series has opened for trading. Of note, today, ISE would cancel any unexecuted balances that cannot be placed on the order book. With the re-platform, any unexecuted balances may rest on the order book as the Exchange would re-price an order that locks or crosses an away market as described within this proposal.

Any incoming order interacting with a DNR Order that is resting on the Exchange's order book would execute at the ABBO price, unless the ABBO is improved to a price which crosses the DNR Order's already displayed price. In the case where the ABBO crosses the DNR Order's price, the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. Away markets have similar obligations not to trade through ISE's market. In the case where the ABBO is improved to a price which locks the DNR Order's displayed price, the incoming order will execute at the DNR Order's displayed price. Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original ABBO and display one MPV away from the new ABBO or its original limit price, and expose such orders at the new ABBO. Once an order is booked to the order book at its original limit price, it will remain at that price until executed or cancelled. Thereafter, should the best away market improve its price such that it locks or crosses the DNR Order limit price on the order book, the Exchange will execute the resulting incoming order that is routed from the away market that locked or crossed the DNR Order limit price. By way of example, consider the following sequence of events in the System for a DNR Order:

9:45:00:00:00—MIAX Quote 0.95 × 1.20
9:45:00:00:10—OPRA updates MIAX BBO 0.95 × 1.20
9:45:00:00:20—ISE Local BBO Quote 1.00 × 1.15
9:45:00:00:30—OPRA disseminates ISE BBO updates: 1.00 × 1.15
9:45:00:00:35: CBOE Quote 1.00 × 1.12
9:45:00:00:45—OPRA disseminates CBOE BBO 1.00 × 1.12
9:45:00:00:50—DNR Order: Buy 5 @1.15 (exposes @ABBO of 1.12, displays 1 MPV from ABBO @1.11)
9:45:00:00:51—OPRA disseminates ISE BBO updates: 1.11 × 1.15 (1.11 being the DNR Order displaying 1 MPV from ABBO)
9:45:00:00:60—MIAX Quote updates to 1.00 × 1.10 (1.10 crosses the displayed DNR Order price, violating locked/crossed market rules; henceforth, we need not protect this price)
9:45:00:00:65—OPRA disseminates MIAX BBO 1.00 × 1.10
9:45:00:00:75—ISE Market Maker Order to Sell 5 @1.09
9:45:00:00:76—Market Maker Order immediately executes against DNR Order 5 contracts @1.12 (1.12 being the 'previous' ABBO price disseminated by CBOE before the receipt of the DNR Order that was subsequently and illegally crossed by MIAX's 2nd quote)
9:45:00:00:77—OPRA disseminates ISE BBO updates: 1.00 x 1.15 (reverts back to BBO set by ISE Local Quote since the DNR Order has executed)

Members may also elect to route their orders. The Exchange proposes to offer market participants two choices for routing options orders: FIND and SRCH. At a high level, a FIND Order will only attempt to route once and then post to the order book; it will not be eligible for routing until the next time the option series is subject to a new Opening Process.[43] In contrast, a SRCH Order may route at any time, including during and after an Opening Process. A SRCH Order that rests on the order book may be routed to an away market if it is locked or crossed by an away market. Each of these proposed options for routing will be explained in greater detail below.

FIND Order

The Exchange proposes to adopt a new routing option at Options 5, Section 4(a)(iii)(B) for FIND Orders. The routing process for a FIND Order is the same as BX Options 5, Section 4(a)(iii)(B). As noted above, a FIND Order is an order that is: (i) Routable at the conclusion of an Opening Process; and (ii) routable upon receipt during regular trading, after an option series is open. Each order marked as ''FIND'' that is submitted after an Opening Process would initiate a Route Timer and route in the order in which its Route Timer ends. FIND Orders that are not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day, and will not be subject to routing even in the event that there is a new Opening Process after a trading halt. At the end of an Opening Process, any FIND Order that is priced through the Opening Price, which is defined within ISE Options 3, Section 8(a)(3), will be cancelled, and any FIND Order that is at or inferior to the Opening Price will execute or book pursuant to ISE Opening Process at Options 3, Section 8(j). The Opening Process is described in greater detail within Options 3, Section 8.

With respect to FIND Orders, Options 5, Section 4(a)(iii)(B)(2) provides that generally, a FIND Order will be included in the displayed BBO at its limit price, unless the FIND Order locks or crosses the ABBO, in which case it will be entered into the order book at the ABBO price and displayed at one MPV inferior to the ABBO. If there exists a locked ABBO when the FIND Order is entered onto the order book, the FIND Order will be entered into the order book at the ABBO price and displayed and re-priced one MPV inferior to the ABBO. If during a Route Timer, ABBO markets move and the FIND Order becomes non-marketable against the ABBO and BBO, the FIND Order will post on the order book at its limit price. If the FIND Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. However, if the ABBO worsens but remains better than the BBO, the FIND Order will re-price and be re-exposed at the new price(s) without interrupting the Route Timer.

If, during the Route Timer, any new interest arrives opposite the FIND Order that is equal to or better than the ABBO price, the FIND Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the FIND Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. Paragraph (a)(iii)(B)(2) of Options 5, Section 4 is intended to describe the possible scenarios that may occur during a Route Timer that has been initiated for a FIND Order. The Exchange believes that describing these scenarios in this introductory paragraph will provide a basis to understand certain FIND Order behaviors in certain circumstances and eliminate the need to have these circumstances repeated throughout the rule. The proposed remaining paragraphs outline System behavior in various circumstances taking into consideration away market pricing to provide market participants with expected outcomes.

Proposed ISE Options 5, Section 4(a)(iii)(B)(3) sets forth a scenario where a FIND Order received after an Opening Process is not marketable against the BBO or the ABBO. In this case, the FIND Order will be entered into the order book at its limit price and treated as

[43] As explained below, FIND Orders that are not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day and post to the Order Book, even in the event that there is a new Opening Process after a trading halt.

DNR for the remainder of the trading day, even if there is a new Opening Process after a trading halt. As noted above, the FIND Order will only attempt to route once.

Proposed ISE Options 5, Section 4(a)(iii)(B)(4) describes a scenario where a FIND Order received after an Opening Process is marketable against the BBO when the ABBO is inferior to the BBO. In this case the FIND Order will be traded on the Exchange at or better than the BBO price. If the FIND Order has size remaining after exhausting the BBO, the Exchange proposes that it may: (1) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, (2) be entered into the order book at its limit price, or (3) if locking or crossing the ABBO, be entered into the order book at the ABBO price and displayed one MPV away from the ABBO. The FIND Order will be treated as DNR for the remainder of the trading day, even in the event that there is a new Opening Process after a trading halt.

Proposed ISE Options 5, Section 4(a)(iii)(B)(5) describes a scenario where a FIND Order received after an Opening Process is marketable against the BBO when the ABBO is equal to the BBO. In this case, the FIND Order will be traded on the Exchange at the BBO. If the FIND Order has size remaining after exhausting the BBO, it will initiate a Route Timer, and expose the FIND Order at the ABBO to allow market participants an opportunity to interact with the remainder of the FIND Order. During the Route Timer, the FIND Order will be included in the BBO at a price one MPV away from the ABBO. If during the Route Timer, the ABBO markets move such that the FIND Order is no longer marketable against the ABBO, the Exchange proposes that it may: (i) Trade at the next BBO price (or prices) if the FIND Order price is locking or crossing that price (or prices), and/or (ii) be entered into the order book at its limit price if not locking or crossing the BBO.

Proposed ISE Options 5, Section 4(a)(iii)(B)(6) describes a scenario where at the end of the Route Timer pursuant to subparagraph (5) above, the FIND Order is still marketable with the ABBO. In this case, the FIND Order will route to an away market up to a size equal to the lesser of either: (1) An away market's size or (2) the remaining size of the FIND Order. If the FIND Order still has remaining size after routing, the Exchange proposes that it will (i) trade at the next BBO price or better, subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the BBO, or (ii) be entered into the order book and posted either at its limit price or re-priced one MPV away if the order would otherwise lock or cross the ABBO. If size still remains, as is always the case, the FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process, which may include a re-opening after a trading halt.

Proposed ISE Options 5, Section 4(a)(iii)(B)(7) describes a scenario where a FIND Order is received after an Opening Process that is marketable against the ABBO when the ABBO is better than the BBO. In this case, the FIND Order will initiate a Route Timer, and expose the order at the ABBO to allow Members and other market participants an opportunity to interact with the FIND Order. As described within ISE Options 5, Section 4(a)(iii)(B)(8), if, at the end of the Route Timer pursuant to subparagraph (7) above, the ABBO is still at the best price and is marketable with the FIND Order, the order will route to the away market(s) whose disseminated price(s) is better than the BBO, up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the FIND Order. If the FIND Order still has remaining size after such routing, it will (i) trade at the BBO price or better, subject to the order's limit price, and, if contracts still remain unexecuted, the remaining size will be routed to away markets disseminating the same price as the BBO, or (ii) be entered into the order book and posted either at its limit price or re-priced one MPV away if the order would otherwise lock or cross the ABBO. If the FIND Order still has remaining size it will not be eligible for routing until the next time the option series is subject to a new Opening Process, which may include a re-opening after a trading halt.

Finally, proposed ISE Options 5, Section 4(a)(iii)(B)(9) provides that a FIND Order that is routed to an away market(s) will be marked as an Intermarket Sweep Order ''ISO'' and designated as an IOC order.

SRCH Orders

The Exchange proposes to adopt a SRCH Order functionality at proposed Options 5, Section 4(a)(iii)(C). The routing process for a SRCH Order is the same as BX Options 5, Section 4(a)(iii)(C). A SRCH Order is routable at any time the option series is open for trading. A SRCH Order on the order book during an Opening Process (including a re-opening following a trading halt), whether it is received prior to an Opening Process or it is a Good-Till-Canceled Order[44] (''GTC'') SRCH Order from a prior day, may be routed as part of an Opening Process. Similar to FIND Orders, SRCH Orders would initiate their own Route Timers and route in the order in which their Route Timers end.

Proposed ISE Options 5, Section 4(a)(iii)(C)(1) provides, similar to a FIND Order, that at the end of an Opening Process, any SRCH Order that is priced through the Opening Price, as defined within Options 3, Section 8(a)(iii), will be cancelled, and any SRCH Order that is at or inferior to the Opening Price will execute or book pursuant to Options 3, Section 8(k). With respect to both FIND and SRCH Orders, Options 3, Section 8 provides a process whereby ISE arrives at an Opening Price. The System cancels any order or quote priced through the Opening Price which was not able to be satisfied either by routing to an away destination or trading in full as part of the opening trade.[45]

Similar to the FIND Order proposal, the Exchange proposes to add a paragraph at proposed ISE Options 5, Section 4(a)(iii)(C)(2), which is intended to describe at the outset possible scenarios that may occur during a Route Timer, including if the ABBO moves and if marketable new interest arrives. In the paragraphs that follow, paragraph (C)(2) would apply in the case where a Route Timer is initiated. Proposed ISE Options 5, Section 4(a)(iii)(C)(2) would provide that, generally, during a Route Timer a SRCH Order will be included in the displayed BBO at its limit price, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the order book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SRCH Order is entered onto the order book, the SRCH Order will be entered into the order book at the ABBO price and displayed one MPV inferior to the ABBO. Once on the order book, the SRCH Order may route if it is locked or crossed by an away market.

If during a Route Timer, ABBO markets move such that the SRCH Order is no longer marketable against the ABBO or BBO, the SRCH Order will

[44] A Good-Till-Canceled Order is an order to buy or sell that remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC Orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. *See* ISE Options 3, Section 7(r).

[45] *See* Options 3, Section 8(j)(6)(A). The Exchange notes that ''priced through the Opening Price'' within Options 3, Section 8 is intended to mean buying interest with a price higher than the Opening Price and selling interest with a price lower than the Opening Price.

book on the order book at its limit price. If, during the Route Timer, any new interest arrives opposite the SRCH Order that is equal to or better than the ABBO price, the SRCH Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. If the ABBO worsens but remains better than the BBO, the SRCH Order will re-price and be re-exposed at the new price(s) without interrupting the Route Timer. If an ABBO locks or crosses the SRCH Order during a new Route Timer, which would subsequently initiate at the conclusion of any Route Timer if interest remains, the SRCH Order may route to the away market at the ABBO at the conclusion of such Route Timer. Finally, if the SRCH Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. The System will route and execute contracts contemporaneously at the end of the Route Timer.

As noted herein and proposed within proposed ISE Options 5, Section 4(a)(iii)(C)(3), a SRCH Order received after an Opening Process that is not marketable against the BBO or the ABBO will be entered into the order book at its limit price. Once on the order book, the SRCH Order is eligible for routing if it is locked or crossed by an away market.

Proposed ISE Options 5, Section 4(a)(iii)(C)(4) presents a scenario where a SRCH Order received after an Opening Process is marketable against the BBO when the ABBO is inferior to the BBO. In this case, the SRCH Order will trade at or better than the BBO price. If the SRCH Order has size remaining after exhausting the BBO, the Exchange proposes that it may: (1) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, and/or (2) be routed, subject to a Route Timer, to away markets if all Exchange interest at better or equal prices has been exhausted, and/or (3) be entered into the order book at its limit price if not locking or crossing the BBO or the ABBO.

Proposed ISE Options 5, Section 4(a)(iii)(C)(5) provides a scenario where the SRCH Order received after an Opening Process is marketable against the BBO when the ABBO is equal to the BBO. In this case, the SRCH Order will trade at the BBO. If the SRCH Order has size remaining after exhausting the BBO, it will initiate a Route Timer and expose the SRCH Order at the ABBO to allow Members an opportunity to interact with the remainder of the SRCH Order. During the Route Timer, the SRCH Order will be included in the BBO at a price one MPV away from the ABBO.

Proposed ISE Options 5, Section 4(a)(iii)(C)(6) provides that if at the end of the Route Timer pursuant to subparagraph (5), the SRCH Order is still marketable with the ABBO, the SRCH Order will route to an away market up to a size equal to the lesser of either: (1) The away market's size, or (2) the remaining size of the SRCH Order. If after that the SRCH Order still has remaining size after routing, it may: (i) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (ii) be entered into the order book at its limit price if not locking or crossing the BBO or the ABBO.

Proposed ISE Options 5, Section 4(a)(iii)(C)(7) provides a scenario where a SRCH Order received after an Opening Process is marketable against the ABBO when the ABBO is better than the BBO. In this case, the SRCH Order will initiate a Route Timer, and expose the SRCH Order at the ABBO to allow Members an opportunity to interact with the SRCH Order. If during the Route Timer, the ABBO markets move such that the SRCH Order is no longer marketable against the ABBO, it may: (i) Trade at the next BBO price (or prices) if the SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the order book at its limit price if not locking or crossing the BBO.

Proposed ISE Options 5, Section 4(a)(iii)(C)(8) provides that if at the end of the Route Timer pursuant to subparagraph (7), the ABBO is still the best price and is marketable with the SRCH Order, the order will route to the away market(s) whose disseminated price(s) is better than the BBO, up to a size equal to the lesser of either: (1) The away markets' size, or (2) the remaining size of the SRCH Order. However, if the SRCH Order still has remaining size after such routing, the Exchange proposes that it may: (i) Trade at the next BBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (ii) be entered into the order book at its limit price if not locking or crossing the BBO or the ABBO.

Finally, as proposed in ISE Options 5, Section 4(a)(iii)(C)(9), and similar to FIND Orders, a SRCH Order that is routed to an away market(s) will be marked as an ISO and designated as an IOC Order.

Re-Pricing

Currently, Options 3, Section 5(b) provides that orders, other than Intermarket Sweep Orders (as defined in Options 5, Section 1(h)), will not be automatically executed by the System at prices inferior to the NBBO (as defined in Options 5, Section 1(j)).[46] Orders that are not automatically executed are handled pursuant to the flash functionality as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-Customer order should instead be accepted and immediately cancelled automatically by the System at the time of receipt. Orders are not executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the Member as routable is routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions.[47]

The Exchange proposes to amend Options 3, Section 5(c) to specify that the System will automatically execute eligible orders using the Exchange's displayed BBO or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been re-priced. With this change, a DNR order that locks or crosses the ABBO may re-price and rest on the order book. Today, the DNR Order that locks or crosses the ABBO would be cancelled. The re-pricing itself is proposed to be described within Options 3, Section 5(c) and (d) similar to BX Options 3, Section 5(c) and (d). Currently, Options 3, Section 5(d) describes Trade-Through Compliance and Locked or Crossed Market behavior.

The Exchange proposes to add rule text within Options 3, Section 5(d) to describe how a non-routable order would be re-priced and remove rule text that describes the flash functionality, which is being eliminated, and language providing that, in lieu of using the flash functionality, Members may specify that a Non-Customer order should instead be cancelled automatically by the System at the time of receipt.

Specifically, the Exchange proposes to state within Options 3, Section 5(c), ''The System automatically executes eligible orders using the Exchange's displayed best bid and offer (''BBO'') or the Exchange's non-displayed order book (''internal BBO'') if the best bid and/or offer on the Exchange has been re-priced pursuant to subsection (d)

[46] Options 5, Section 1(j) provides, '' 'NBBO' means the national best bid and offer in an options series as calculated by an Eligible Exchange.''

[47] *See* Options 3, Section 5(d).

below.'' Also, the Exchange proposes to state within Options 3, Section 5(d), ''An order that is designated by a Member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.'' The Exchange believes that the addition of this language, similar to language within BX Options 3, Section 5(d), will provide Members with additional information as to the manner in which orders are handled by the System when those orders would lock or cross an away market.

Supplementary Material to Options 5, Section 2

The Exchange proposes to remove the rule text within Supplementary Material .01 to Options 5, Section 2 that provides,

> All public customer ISOs entered by an Electronic Access Member on behalf of an Eligible Exchange shall be represented on the Exchange as Priority Customer Orders, as defined in Options 1, Section 1(a)(38). There shall be no obligation on Electronic Access Members to determine whether the public customer for whom the Eligible Exchange is routing an ISO meets the definition of a Priority Customer.

Current ISE Options 5, Section 4(f) provides, ''Entering Members whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.'' The Exchange believes that Options 5, Section 4(f), which is proposed to be relocated to Options 5, Section 4(a)(ii), is more expansive than Supplementary Material .01 to Options 5, Section 4 and would apply to the indicator for the type of market participant. Furthermore, obligations associated with submitting ISO Orders are born by the member submitting the ISO Order. Each Exchange's rules describe how ISO Orders may be utilized.[48]

The Exchange proposes to remove the rule text within Supplementary Material .07 to Options 5, Section 2 that provides, ''All orders entered on the Exchange and routed to another exchange via an ISO pursuant to the Supplementary Material of this Options 5, Section 2 that result in an execution shall be binding on the Member that entered such orders.'' As noted above, current ISE Options 5, Section 4(f) provides that, ''Entering Members whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.'' Supplementary Material .07 to Options 5, Section 2 refers to orders entered pursuant to the flash functionality pursuant to Supplementary Material .02 to Options 5, Section 2, which will be eliminated and, therefore, renders the rule text within Supplementary Material .07 to Options 5, Section 2 unnecessary.

Supplementary Material to Options 5, Section 4

The Exchange proposes to remove the rule text within Supplementary Material .01 to Options 5, Section 4 that provides, ''Options 5, Section 4 does not prohibit NES or third-party unaffiliated routing broker-dealers used by NES from designating a preferred market-maker at the other exchange to which the order is being routed pursuant to Options 5, Section 4.'' As noted above, current Options 5, Section 4(f) provides, ''Entering Members whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.'' The Exchange believes that this rule is more expansive than Supplementary Material .01 to Options 5, Section 4 and would apply to designating a preferred market-maker.

The Exchange proposes to remove the rule text within the Supplementary Material .02 to Options 5, Section 4 that provides, ''In the event that NES cannot provide Routing Services, the Exchange will cancel orders that, if processed by the Exchange, would violate Options 5, Section 1 (prohibition on trade-throughs) or Options 5, Section 3 (prohibition on locked and crossed markets).'' The Exchange's proposal to re-price orders which would otherwise lock or cross an away market would cause an order, that was subject to routing, to rest on the order book in the event that NES was unable to provide routing services. The Exchange proposes to remove the rule text within Supplementary Material .02 to Options 5, Section 4 to permit the Exchange to re-price and rest such orders on the order book, similar to DNR Orders.

Finally, the Exchange proposes to renumber the rule text within Supplementary Material .03 to Options 5, Section 4 to .01.

Implementation

The Exchange intends to begin implementation of the proposed rule change for ISE prior to December 22, 2023. Separately, the Exchange plans to begin implementation of the proposed rule change prior to December 23, 2022, with respect to MRX, and prior to September 1, 2023, with respect to GEMX. Each implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates for each exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[49] in general, and furthers the objectives of Sections 6(b)(4) and Section 6(b)(5) of the Act,[50] 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 and is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange's proposal to adopt routing strategies, that are substantially the same as BX, with respect to DNR, FIND, and SRCH Orders is consistent with the Act because the functionality will provide ISE Members the same flexibility for routing orders that is afforded to BX Participants today.[51] With this proposal, Members would continue to route orders to away markets to obtain the best price, while also accessing ISE's order book. Further, with this proposal, Members will have the added ability to elect a particular routing strategy, FIND or SRCH, when routing their order. Also, Members may continue to elect not to route their order, as is the case today.

Additionally, today, orders that are not automatically executed are handled pursuant to the flash functionality as provided in Supplementary Material .02 to Options 5, Section 2; provided that Members may specify that a Non-

[48] *See e.g.,* Phlx Options 3, Section 7(b)(3), The Nasdaq Options Market LLC Options 3, Section 7(a)(7), and BX Options 3, Section 7(a)(6).

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(4) and (5).

[51] *See* BX Options 5, Section 4, Order Routing.

Customer order should instead be accepted and immediately cancelled automatically by the System at the time of receipt. This proposal eliminates flash functionality and proposes to re-price orders that would otherwise lock or cross an away market. As is the case today, an order that is designated by the Member as routable will route in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions.

While the Exchange is eliminating the current flash functionality, ISE is proposing to adopt order routing strategies that include a Route Timer that, similar to flash functionality, will continue to advertise orders prior to routing them in an attempt to obtain a local execution. Unlike the flash functionality where Non-Customer orders may opt out, the Route Timer will be established for each order that may route. During the Route Timer, similar to the flash functionality, Members may enter responses up to the size of the order being exposed. However, unlike flash functionality, an order that matches the price of an order during the Route Time will trade against that order without waiting for the Route Timer to complete. In contrast, with flash functionality, orders allocate at the end of the timer, with the exception of specific scenarios that will cause early termination [52] and allocate pursuant to Options 3, Section 10, with Priority Customers executing first in time and all other market participant orders being allocated size pro-rata.

The Exchange's proposal to remove Sweep Orders within Supplementary Material .05 to Options 5, Section 2 and Options 3, Section 7(s) is consistent with the Act as a Sweep Order would no longer be necessary without the flash functionality and Sweep Orders would be discontinued. Sweep Orders do not enter the flash functionality process of Supplementary Material .02 of Options 5, Section 2 and are processed separately. Sweep Orders are not necessary to facilitate the routing of Public Customer and Non-Customer orders to away markets because the proposed routing functionality would route all orders to away markets uniformly. Additionally, uniformly, all orders would be subject to re-pricing if the order would otherwise lock or cross an away market. The Exchange would continue to not cancel marketable orders that could not be executed on ISE because the order would lock or cross an away market, rather the order would be re-priced with the new routing functionality. With the new routing process, a Route Timer would begin for each order that is subject to routing on the Exchange. While Members may not opt out of the Route Timer, as is the case today, the proposed routing process would create a uniform streamlined process for routing all orders (FIND and SRCH) where a market participant has elected to have an order routed; Members may continue to elect to not have their orders routed. The new routing process does not distinguish as between Public Customer orders and Non-Customer orders, rather all orders would be processed in the same manner. Further, the proposed routing process would serve to further harmonize routing across Nasdaq affiliated markets.

The Exchange's proposal to remove Supplementary Material .04 to Options 5, Section 2, which sets forth routing procedures for Non-Customer orders that opt out of being processed under the flash functionality is consistent with the Act. The Exchange's proposal replaces its current away routing regime with the proposed FIND and SRCH order routing types; all orders would be processed in a uniform manner. The processing of Sweep Orders and the routing procedures under Supplementary Material .04 to Options 5, Section 2 were established as alternative routing procedures to the flash functionality and because the Exchange proposes to eliminate the flash order functionality, these routing procedures are no longer needed under the proposed routing procedures.

NES will continue to route orders to away markets on behalf of ISE. Orders executed on ISE would continue to not trade through away markets. Orders would execute at the best price, whether locally or on an away market. For these above reasons, the Exchange believes that eliminating the flash functionality and adopting routing functionality similar to BX will continue to protect investors and the general public by continuing to provide Members with an ability to route to away markets at the best price in the event ISE is not at the best price or elect not to route.

The Exchange's proposal to offer two new routing strategies to Members, similar to BX, is consistent with the Act as it will provide Members with a greater choice when routing. FIND and SRCH Orders will route away when ISE is not at the best price. All Members may elect to route orders, as FIND or SRCH, or elect not to route orders (DNR Orders).

Re-pricing orders that would otherwise lock or cross an away market, as proposed within Options 3, Section 5 is consistent with the Act. Today, BX re-prices orders by displaying them one MPV away from the best bid or offer.[53] This behavior is consistent with the protection of investors and the general public because it affords Participants the ability to obtain the best price offered among the various options markets while not locking or crossing an away market. As noted above, the Exchange would continue to not trade through an away market. Any order that locks or crosses an away market on ISE would be re-priced as a result of this amendment. This would include DNR orders resting on the order book and FIND and SRCH Orders that have not yet routed and are subject to a Route Timer.

The Exchange's proposal describes a number of potential routing scenarios to provide Members with greater transparency as to the manner in which the System would handle their order. The proposed rule also serves to inform Members about potential outcomes if a member elects to mark their order as ''DNR.'' The various scenarios are intended to bring greater transparency to the Exchange's Rules.

The Exchange's proposal to only utilize FIX to route orders is consistent with the Act because the OTTO protocol is not designed for routing. Today, Members may not route orders through OTTO and this will not be changing as a result of the change in routing rules. Members on ISE may submit and route all orders through FIX. OTTO is an optional port available to all Members on ISE for the submission of orders.

The Exchange's proposal to remove the rule text within Supplementary Material .01 to Options 5, Section 2 is consistent with the Act. Today, ISE Options 5, Section 4(f) requires Members to honor trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange. This is the case for all options exchanges that receive routing instructions from their members. Today, an ISE Member that submits an order and does not mark that order as DNR would be subject to the flash functionality and routing rules within Options 5, Section 4. If that order routed to an away market, the Member would be obligated to honor that trade on the away market. Supplementary Material .01 to Options 5, Section 2 would require a public customer ISO entered by an Electronic Access Member to be represented on the Exchange as a

[52] *See* Supplementary Material .02(b) and (c) to Options 5, Section 2.

[53] *See* BX Options 3, Section 5.

Priority Customer Order [54] pursuant to Options 1, Section 1(a)(38). On ISE, a public customer order from an away market equates to a Priority Customer Order on ISE. Supplementary Material .01 to Options 5, Section 2 further states that there is no obligation for an Electronic Access Member to determine whether the public customer order from the away market meets the definition of a Priority Customer. As specified in Options 5, Section 4(f), Members are required to honor trades from away markets. A trade from an away market from a public customer would be honored on ISE as a Priority Customer without the need for additional due diligence. Finally, obligations associated with submitting ISO Orders are born by the member submitting the ISO Order. Each Exchange's rules describe how ISO Orders may be utilized.[55]

The Exchange's proposal to remove the rule text within Supplementary Material .07 to Options 5, Section 2 is consistent with the Act. Supplementary Material .07 to Options 5, Section 2 refers to orders entered pursuant to the flash functionality within Supplementary Material .02 to Options 5, Section 2, which will be eliminated, and, therefore, renders the rule text within Supplementary Material .07 to Options 5, Section 2 unnecessary.

The Exchange's proposal to remove the rule text within Supplementary Material .01 to Options 5, Section 4 is consistent with the Act. Supplementary Material .01 to Options 5, Section 4 states that Options 5, Section 4 does not prohibit NES or third-party unaffiliated routing broker-dealers used by NES from designating a preferred market-maker at the other exchange to which the order is being routed pursuant to Options 5, Section 4. The Exchange believes that it is not necessary to retain this rule text, as Options 5, Section 4(f) obligates Members to honor such trades that are executed on away markets, to the same extent they would be obligated to honor a trade executed on the Exchange. The Exchange notes that once an order is routed to an away market, the rules of the away market are in effect. For example, if an order was routed from Nasdaq ISE to Nasdaq Phlx LLC (''Phlx''), the Phlx rules would apply with respect to the execution of that order. The ISE Member would be required to honor the trade executed on Phlx pursuant to Phlx's rules.

The Exchange's proposal to remove the rule text within the Supplementary Material .02 to Options 5, Section 4 is consistent with the Act because the Exchange proposes to re-price orders which would otherwise lock or cross an away market. This proposal would permit the Exchange to re-price and rest such orders on the order book, similar to DNR Orders.

The Exchange's proposal to remove pricing related to flash functionality is reasonable, equitable and not unfairly discriminatory because the flash functionality would no longer be available to any Member. It is reasonable to remove the fees related to flash orders and the references to flash orders from the Pricing Schedule because the Exchange is removing the flash functionality from its Rulebook. Additionally, it is equitable and not unfairly discriminatory to remove the fees related to flash orders and the references to flash orders from the Pricing Schedule because no Exchange Member would be able to utilize the flash functionality once it is removed from the System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal to adopt routing, similar to BX,[56] does not impose an undue burden on inter-market competition as the proposal will permit ISE Members to continue to route orders to away markets to obtain the best price, while also accessing ISE's order book, albeit with new routing options that are afforded to BX Participants today. The FIND and SRCH routing options would be available to all ISE Members. Finally, the options not to route (DNR Order) would continue to be offered to all ISE Members.

The Exchange's proposal to remove Sweep Orders within Supplementary Material .05 to Options 5, Section 2 and Options 3, Section 7(s) does not impose an undue burden on competition because a Sweep Order would no longer be necessary without the flash functionality and Sweep Orders would be discontinued.

The Exchange's proposal to only utilize FIX to route order does not impose an undue burden on competition because the OTTO protocol is not designed for routing. Today, Members may not route orders through OTTO and this will not be changing as a result of the change in routing rules. Members on ISE may submit and route all orders through FIX. OTTO is an optional port available to all Members on ISE for submitting orders.

The Exchange's proposal to re-price orders that would lock or cross away markets does not impose an undue burden on inter-market competition. Similar to BX Options 5, Section 4, the Exchange would re-price orders one MPV away from the best bid or offer. Better priced orders would continue to be accessible on ISE's order book. ISE would continue to not trade through an away market. Any order that locks or crosses an away market on ISE would be re-priced as a result of this amendment. This would include DNR orders resting on the order book and FIND and SRCH Orders that have not yet routed and are subject to a Route Timer.

The Exchange's proposal to remove the rule text within Supplementary Material .01 to Options 5, Section 2, Supplementary Material .07 to Options 5, Section 2 and Supplementary Material .01 to Options 5, Section 4 does not impose an undue burden on competition because ISE Options 5, Section 4(f) already requires Members to honor trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange. This would apply to the indicator for the type of market participant and designating a preferred market-maker, as well as obviate the need for redundant or unnecessary rule text.

The proposal to remove Supplementary Material .07 to Options 5, Section 2 does not impose an undue burden on competition. This rule discusses the obligation of a member who has entered an order on the Exchange that is routed away via an ISO pursuant to the flash functionality. The Exchange is proposing to remove the flash functionality, so the rule is no longer needed. In addition, obligations associated with submitting ISO Orders are born by the member submitting the ISO Order. Each Exchange's rules describe how ISO Orders may be utilized.[57] Finally, the Exchange's proposal to remove the rule text within the Supplementary Material .02 to Options 5, Section 4 does not impose an undue burden on competition because the Exchange proposes to re-price orders which would otherwise lock or cross an away market.

The Exchange's proposal to remove pricing related to flash functionality does not impose an undue burden on competition because the flash

[54] Options 1, Section 1(a)(38) provides that the term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[55] *See* note 48 above.

[56] *See* BX Options 5, Section 4, Order Routing.

[57] *See* note 48 above.

functionality would no longer be available to any Member.

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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[58] and subparagraph (f)(6) of Rule 19b–4 thereunder.[59]

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–ISE–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–ISE–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–ISE–2022–11 and should be submitted on or before June 8, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10612 Filed 5–17–22; 8:45 am]

BILLING CODE 8011–01–P

[58] 15 U.S.C. 78s(b)(3)(A).

[59] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94901; File No. SR–MRX–2022–04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX's Pricing Schedule at Options 7 To Assess Membership, Port and Market Data Fees

May 12, 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 May 2, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX's Pricing Schedule at Options 7 to assess membership, port and market data fees.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend its Pricing Schedule at Options 7 to assess membership, port and market data fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016. The proposed changes are designed to update fees for MRX's data and services to reflect their current value—rather than their value when it was a new exchange six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, ports and market data in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.[3] Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed changes fall into three categories, discussed in detail below: Membership fees (Options 7, Section 5; Other Options Fees and Rebates); port fees (Options 7, Section 6; Ports and Other Services); and market data fees (Options 7, Section 7 Market Data).

This Proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for membership, ports or market data. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not assessing membership, port and market data fees today. New exchanges commonly waive connectivity, data and membership fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, ''graduate'' to compete against established exchanges and charge fees that reflect the value of their services.[4] If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[5]

Options 7, Section 5

As noted above, MRX Members are not assessed fees for membership today. Under the proposed fee change, MRX Members will be required to pay a monthly Access Fee, which entitles MRX Members to trade on the Exchange based on their membership type. Specifically, MRX proposes to assess Electronic Access Members[6] an Access Fee of $200 per month, per membership. The Exchange proposes to assess Market Makers[7] Access Fees depending on whether they are a Primary Market Maker (''PMM'') or a Competitive Market Maker (''CMM''). A PMM would be assessed an Access Fee of $200 per month, per membership. A CMM would be assessed an Access Fee of $100 per month, per membership.[8] The proposed fees are identical to access fees on Nasdaq GEMX, LLC (''GEMX'').[9]

In order to receive market making appointments to quote in any options class, CMMs will also be assessed a CMM Trading Right Fee identical to GEMX.[10] CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. On a quarterly basis, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively traded index options), rounded down to the nearest one hundredth of a percentage with a maximum of 15 points. A new listing is assigned a point value of zero for the remainder of the quarter in which it was listed. CMMs may seek appointments to options classes that total 20 points for the first CMM Right it holds, and 10 points for the second and each subsequent CMM Right it holds.[11] In order to encourage CMMs to quote on the Exchange, MRX launched CMM trading rights without any fees, allowing CMMs to freely quote in all options classes.

The Exchange is now proposing to adopt a monthly CMM Trading Rights Fee. Under the proposed fee structure, CMMs will be assessed a Trading Rights Fee of $850 per month for the first trading right, which will entitle the CMM to quote in 20 percent of industry volume.[12] Each additional CMM Right will cost $500 per month, and will entitle the CMM to quote an additional 10 percent of volume. Similar to GEMX's trading rights fee,[13] a new CMM would pay $850 for the first trading right and all CMMs would thereafter pay $500 for each additional trading right. The Exchange is proposing this pricing model because each subsequent CMM Right costs less than the first trading right. All CMMs have the opportunity to purchase additional CMM Rights beyond the initial trading right in order to quote in additional options series. The Exchange notes that it is not proposing trading right fees for

[3] *See, e.g.,* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf.* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero); *see also* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX).

[4] For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15. *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR–EMERALD–2019–15.

[5] Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

[6] The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[8] In the case where a single Member has multiple MRX memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the access fee for each of those memberships.

[9] *See* GEMX Options 7, Section 6.A. (Access Fees).

[10] *See* GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

[11] A CMM may request changes to its appointments at any time upon advance notification to the Exchange in a form and manner prescribed by the Exchange. *See* MRX Options 2, Section 3(c)(3).

[12] These trading rights are referred to as CMM Rights. *See* MRX Options 2, Section 3.

[13] *See* GEMX Options 7, Section 6.B.

PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. PMMs have additional obligations on MRX as compared to CMMs.[14] The Exchange is proposing only to charge the $200 access fee to EAMs, and no trading rights fee, as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers' use.[15]

Options 7, Section 6

The Exchange proposes to amend fees for the following ports within Options 7, Section 6: (1) FIX,[16] (2) SQF; [17] (3) SQF Purge; [18] (4) OTTO; [19] (5) CTI; [20] and (6) FIX DROP.[21] Currently, no fees are being assessed for these ports. The Exchange proposes to assess a FIX Port Fee and OTTO Port Fee of $650 per port, per month, per account number.[22] The Exchange proposes to assess an SQF Port Fee and SQF Purge Port Fee of $1,250 per port, per month.[23] The Exchange proposes to assess a CTI Port Fee and a FIX Drop Port Fee of $650 per port, per month.

The OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports [24] are available to all EAMs, and will be subject to a monthly cap of $7,500.

The SQF Port and the SQF Purge Port will be subject to a monthly cap of $17,500. The SQF Port and SQF Purge Port are available to Market Makers.[25]

The Exchange is not amending the TradeInfo MRX Interface or the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed or Nasdaq MRX Spread Feed Ports, all of these aforementioned ports will continue to be assessed no fees. Additionally, as is the case today, the Disaster Recovery Ports for TradeInfo and the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed or Nasdaq MRX Spread Feed Ports will not be assessed a fee.

Finally, the Exchange proposes to amend the Disaster Recovery Port Fee from $0 to $50 per port, per month, per account for FIX, SQF, SQF Purge and OTTO Ports and from $0 to $50 per port, per month for CTI, and FIX DROP Ports. Disaster Recovery ports provide connectivity to the Exchange's disaster recovery data center, to be utilized in the event the Exchange should failover during a trading day. The Exchange proposes to assess the aforementioned Disaster Recovery Port Fees to encourage Members to be efficient when purchasing Disaster Recovery ports. Similar to all other ports, Disaster Recovery Ports need to be maintained by the Exchange.[26] The proposed port fees are similar to fees assessed by GEMX.[27]

In order to submit orders into MRX, only one order protocol is required, either FIX or OTTO.[28] A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1. Similarly, only one quoting protocol, or SQF Port, is necessary to

[14] PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. *See* Options 2, Section 5(e)(2). Additionally, PMMs are required to submit a Valid Width Quote to open their assigned options series. *See* Options 3, Section 8(c)(1) and 8(c)(3).

[15] The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Makers quotes in addition to any orders transacted on MRX and conducts surveillance on Market Maker quotes to ensure these participants have met their quoting and other market making obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all EAMs.

[16] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) Execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

[17] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Supplementary Material .03(c) to Options 3, Section 7.

[18] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker. Dedicated SQF Purge Ports enable market makers to seamlessly manage their ability to remove their quotes in a swift manner.

[19] ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7.

[20] Clearing Trade Interface (''CTI'') is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement (''CMTA'') or The Options Clearing Corporation (''OCC'') number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (*e.g.,* auction type) for billing purposes; and (v) market participant capacity. *See* Options 3, Section 23(b)(1).

[21] FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) Executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. *See* Options 3, Section 23(b)(3).

[22] An ''account number'' shall mean a number assigned to a Member. Members may have more than one account number. *See* Options 1, Section 1(a)(1).

[23] SQF's Port Fees are assessed a higher dollar fee as compared to FIX and OTTO ports ($1,250 vs. $650) because the Exchange has to maintain options assignments within SQF and manage quoting traffic. Market Makers may utilize SQF Ports in their assigned options series. Market Maker badges are assigned to specific SQF ports to manage the option series in which a Market Maker may quote. Additionally, because of quoting obligations provided for within Options 2, Section 5, Market Makers are required to provide liquidity in their assigned options series which generates quote traffic. The Exchange notes because of the higher fee, SQF ports are billed per port, per month while FIX and OTTO ports are billed per port, per month, per account number. Members may have more than one account number.

[24] This includes FIX, SQF, SQF Purge, OTTO, CTI and FIX Drop Disaster Recovery Ports.

[25] Only Market Makers may quote on MRX. The Exchange is proposing non-substantive technical amendments to add commas within the Production column of the proposed rule text to separate terms.

[26] The Exchange maintains ports in a number of ways to ensure that ports are properly connected to the Exchange at all times. This includes offering testing, ensuring all ports are up-to-date with the latest code releases, as well as ensuring that all ports meet the Exchange's information security specifications.

[27] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

[28] Only Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency, through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port is necessary for a Member to trade on MRX.

quote on MRX. Depending on a Member's business model, one protocol may be better suited for a Member as compared to another protocol when determining which order entry protocol to select.[29] Members may elect to utilize both order entry protocols, depending on how they organize their business. Only one protocol is necessary to submit orders into MRX; however, Members may choose to purchase a greater number of order entry ports, depending on that Member's business model.[30]

The Exchange notes that FIX, and OTTO Ports, as well TradeInfo, are available to all Members and may be utilized to cancel orders. Further, FIX DROP, the Clearing Trade Interface, and TradeInfo are available to all Members and may be utilized to obtain order information. These different protocols are not all necessary to conduct business on MRX; a Member may choose among protocols based on their business workflow.

Options 7, Section 7

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data; [31] (2) Nasdaq MRX Order Feed; [32] (3) Nasdaq MRX Top Quote Feed; [33] (4) Nasdaq MRX Trades Feed; [34] and (5) Nasdaq MRX Spread Feed.[35] Currently, no fees are being assessed for these feeds.

The Exchange also proposes to assess an Internal Distributor Fee [36] of $1,500 per month for the Nasdaq MRX Depth of Market Feed, Order Feed, and Top Quote Feed. The Exchange proposes to assess an Internal Distributor Fee of $750 per month for the Trades Feed. Finally, the Exchange proposes to assess an Internal Distributor Fee of $1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

The Exchange proposes to assess an External Distributor Fee of $2,000 per month for the Nasdaq MRX Depth of Market Feed, Order Feed, and Top Quote Feed, an External Distributor Fee of $1,000 per month for the Trades Feed, and an External Distributor Fee of $1,500 per month for the Spread Feed.

MRX does not currently assess subscriber fees, but proposes to begin assessing Professional [37] and Non-Professional [38] subscriber fees. The Exchange proposes to assess a Professional Subscriber of $25 per month, and a Non-Professional Subscriber of $1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each data product.[39]

MRX also proposes a Non-Display Enterprise License of $7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers.[40]

The Non-Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[42] 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.

[29] For example, while the FIX protocol permits routing capability the OTTO protocol does not permit routing capability. This distinction may cause a Member to elect a certain protocol based on whether a Member desires to execute an order locally or route an order. The OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior.

[30] For example, a Member may desire to utilize multiple FIX or OTTO ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[31] Nasdaq MRX Depth of Market Data Feed (''Depth of Market Feed'') provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. In addition, subscribers are provided with total aggregate quantity, Public Customer aggregate quantity, Priority Customer aggregate quantity, price, and side (*i.e.,* bid/ask). This information is provided for each of the top five price levels on the Depth Feed. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(1).

[32] Nasdaq MRX Order Feed (''Order Feed'') provides information on new orders resting on the book (*e.g.,* price, quantity and market participant capacity). In addition, the feed also announces all auctions. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(2).

[33] Nasdaq MRX Top Quote Feed (''Top Quote Feed'') calculates and disseminates MRX's best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information along with opening price, daily trading volume, high and low prices for the day. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(3).

[34] Nasdaq MRX Trades Feed (''Trades Feed'') displays last trade information along with opening price, daily trading volume, high and low prices for the day. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. *See* Options 3, Section 23(a)(4).

[35] Nasdaq MRX Spread Feed (''Spread Feed'') is a feed that consists of: (1) Options orders for all Complex Orders (*i.e.,* spreads, buy-writes, delta neutral strategies, etc.); (2) data aggregated at the top five price levels (BBO) on both the bid and offer side of the market; (3) last trades information. The Spread Feed provides updates, including prices, side, size and capacity, for every Complex Order placed on the MRX Complex Order Book. The Spread Feed shows: (1) Aggregate bid/ask quote size; (2) aggregate bid/ask quote size for Professional Customer Orders; and (3) aggregate bid/ask quote size for Priority Customer Orders for MRX traded options. The feed also provides Complex Order auction notifications. *See* Options 3, Section 23(a)(5).

[36] A ''distributor'' of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

[37] A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

[38] A Non-Professional Subscriber is a natural person who is neither: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[39] For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top of Market, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay $25 ($1 for Non-Professional).

[40] The Non-Display Enterprise License of $7,500 per month is optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

[41] *See* 15 U.S.C. 78f(b).

[42] *See* 15 U.S.C. 78f(b)(4) and (5).

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[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'. . . .'' [43]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.'' [44]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [45] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [46] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [47] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [48]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.[49]

In June 2019, MRX commenced offering complex orders.[50] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities and other trading functionality that was nearly identical to functionality available on ISE.[51] By way of comparison, ISE, unlike MRX, assessed membership fees in 2019 [52] while offering the same suite of functionality as MRX, with a limited exception.[53] Additionally, by way of

[43] *See NetCoalition,* 615 F.3d at 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)).

[44] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[45] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[46] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[47] *Id.*

[48] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[49] *See e.g.,* Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR–ISEMercury–2016–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR–ISEMercury–2016–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR–ISEMercury–2016–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR–ISEMercury–2016–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR–MRX–2018–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR–MRX–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR–MRX–2018–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR–MRX–2018–27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR–MRX–2019–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR–MRX–2019–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR–MRX–2020–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR–MRX–2020–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR–MRX–2020–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR–MRX–2020–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR–MRX–2020–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR–MRX–2020–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR–MRX–2021–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

[50] *See* Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

[51] One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. ''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) Order and execution management: Enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: Access to real-time market data (*e.g.,* NBBO and Exchange BBO); (3) risk management: Set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: Comprehensive audit trail of orders and trades (*e.g.,* order history and done away trade reports). *See* ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

[52] In 2019, ISE assessed the following Access Fees: $500 per month, per membership to an Electronic Access Member, $5,000 per month, per membership to a Primary Market Maker and $2,500 per month, per membership to a Competitive Market Maker. ISE does not assess Trading Rights Fees to Competitive Market Makers. See Securities Exchange Act Release No. 82446 (January 5, 2018), 83 FR 1446 (January 11, 2018) (SR–ISE–2017–112) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange's Schedule of Fees). Of note, ISE assessed Access Fees prior to 2019 as well.

[53] Unlike ISE, MRX does not offer Precise. *See* note 51, *supra.*

comparison, ISE assessed fees for ports [54] in 2019 while offering the same suite of functionality as MRX, with a limited exception.[55] Finally, in 2019, unlike MRX, ISE assessed fees for its market data,[56] while offering the same functionality suite as MRX, with a limited exception.

[54] Since 2019, ISE has assessed the following port fees: A FIX Port Fee of $300 per port, per month, per mnemonic, an SQF Port Fee and SQF Purge Port Fee of $1,100 per port, per month, an OTTO Port Fee of $400 per port, per month, per mnemonic with a monthly cap of $4,000, a CTI Port Fee and FIX DROP Port Fee of $500 per port, per month, per mnemonic. *See* Securities Exchange Act Release No. 82568 (January 23, 2018), 83 FR 4086 (January 29, 2018) (SR–ISE–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess Fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port Connectivity). Of note, ISE assessed port fees prior to 2019 as well.

[55] *See* note 51, *supra.*

[56] *See e.g.,* Securities Exchange Act Release Nos. 53212 (February 2, 2006), 71 FR 6803 (February 9, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for Historical Options Tick Market Data); 53390 (February 28, 2006), 71 FR 11457 (March 7, 2006) (Order Granting Accelerated Approval of a Proposed Rule Change Establishing Fees for Historical Options Tick Market Data for Non-Members); 53756 (May 3, 2006), 71 FR 27526 (May 11, 2006) (Order Granting Approval of a Proposed Rule Change Establishing Fees for Enhanced Sentiment Market Data); 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ISE Open/Close Trade Profile Fees; 56315 (August 24, 2007), 72 FR 50148 (August 30, 2007) (Order Approving a Proposed Rule Change Relating to ISEE Select Market Data Fees); 59679 (April 1, 2009), 74 FR 15795 (April 7, 2009) (SR–ISE–2007–97) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market Data Fees);61086 (December 1, 2009), 74 FR 64783 (December 8, 2009) (SR–ISE–2009–103) (Notice of Filing of Proposed Rule Change Relating to Market Data Fees); 65002 (August 1, 2011), 76 FR 47630 (August 5, 2011) (SR–ISE–2011–50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees); and 65678 (November 10, 2011), 76 FR 70178 (November 3, 2011) (SR–ISE–2011–67) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees).

Membership, Ports and Market Data Are Subject to Significant Substitution-Based Competitive Forces

An Exchange can show that a product is ''subject to significant substitution-based competitive forces'' by introducing evidence that customers can substitute the product for products offered by other exchanges.

NYSE National was able to prove exactly this when it sought approval for the ''NYSE National Integrated Feed'' [57] in 2020. NYSE National at the time of its filing was in a similar position to MRX today—the exchange had an approximately 1.9% market share of executed volume of equity trades.[58] The Commission approved the proposal to establish fees for NYSE National based on a finding that the exchange ''was subject to significant substitution-based competitive forces.'' Citing *NetCoalition I,*[59] the Commission stated that ''whether a market is competitive notwithstanding potential alternatives depends on factors such as the number of buyers who consider other products interchangeable and at what prices.'' [60] Noting that ''many market participants . . . do not subscribe to . . . the NYSE National Integrated Feed, even when the feed is offered without charge,'' the Commission concluded that ''NYSE National's consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees,'' demonstrated that the exchange ''was subject to significant substitution-based competitive forces'' in setting fees such that the proposed rule change was consistent with the Act.[61]

[57] NYSE National stated that the proposed integrated feed included depth-of-book order data, last sale data, security status updates, and stock summary messages. *See* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf.* (''Initial NYSE National Proposal'')

[58] *See id.*

[59] *See NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. 2010) (''*NetCoalition I*'').

[60] *See* NYSE National Approval Order (citing *NetCoalition I*).

MRX today is essentially in the same position as NYSE National in 2020. MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. It has a small number of firms that are Members, subscribe to ports, or purchase market data relative to its affiliated options exchanges. Two firms that currently subscribe to MRX market data have terminated all of their subscriptions, and one additional firm that is currently a Member and purchases port services has told the Exchange that it will initiate a review of all of the services it purchases from MRX based on the all-in cost of trading on MRX. Based on prior experience, MRX may see additional cancellations of membership, ports and market data after May 2, 2022.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

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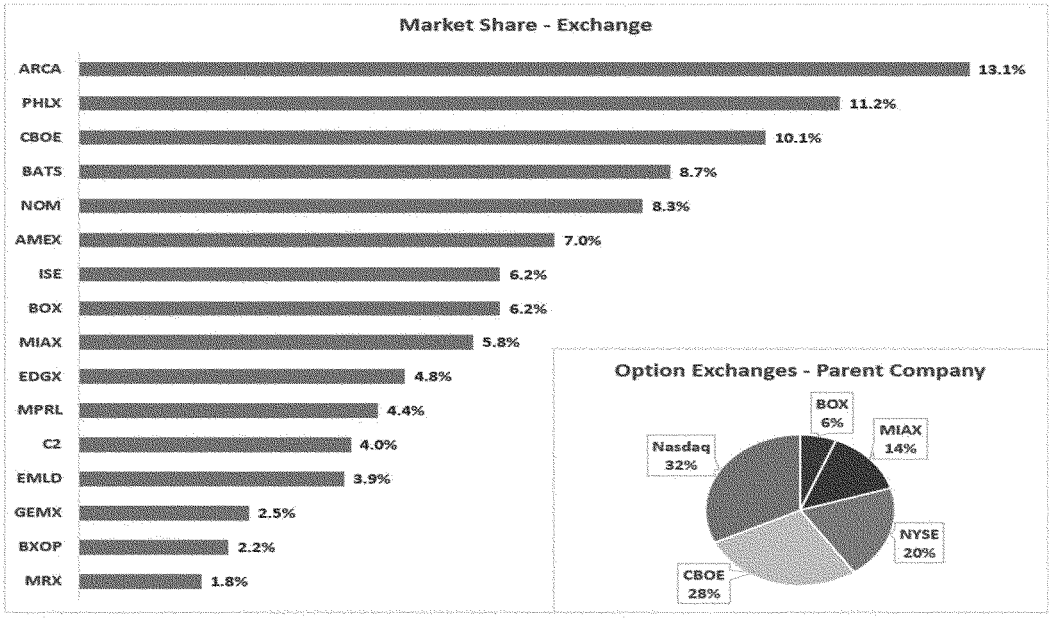
[61] *See id.*

Chart 1: Market Share by Exchange for January 2022



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading, membership, ports and market data.

Chart 2 below compares the number of firms purchasing FIX and SQF ports, memberships, and market data from MRX to the number of firms purchasing such services from the four MRX-affiliated options exchanges, GEMX, ISE, The Nasdaq Stock Market LLC (''NOM'') and Nasdaq PHLX, LLC (''Phlx'').

Chart 2: Number of Firms Purchasing Port, Membership, Market Data and Trading Services from Options Venues (March 2022)

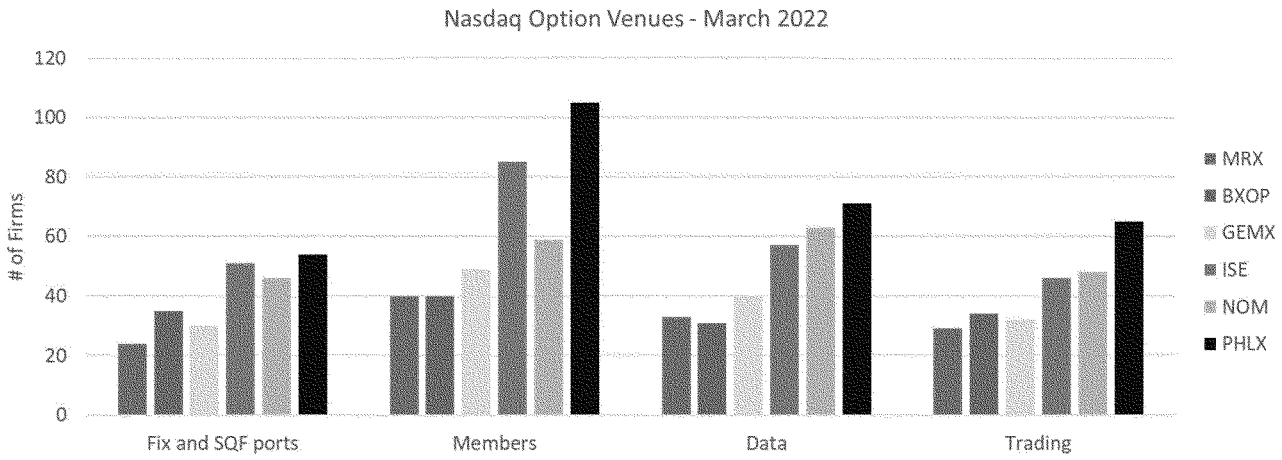


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Chart 2 shows that fewer firms purchased MRX ports in March 2022 than the ports of its options exchange affiliates. As described in detail below, only one order protocol is required to submit orders to MRX, either FIX or OTTO. Quoting protocols are only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1, and only one quoting protocol (SQF) is necessary to quote on MRX. Members may choose a greater number of order entry ports, however, depending on that Member's particular business model.[62] With respect to the submission of orders, Members may also choose not to purchase any port at all from the Exchange, and instead rely on the port of a third party to submit an

[62] For example, a Member may desire to utilize multiple FIX or OTTO ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

order.[63] The Exchange assigns the Member a badge [64] and/or mnemonic [65] to submit quotes and/or orders to the Exchange on a particular port. Use of this badge or mnemonic by a Member would allow a Member to use a third-party port to trade on the Exchange.

The experience of MRX's affiliates shows that the number of ports that members choose to purchase varies widely. For example, a review of the Phlx exchange in April 2022 shows that, among its members that purchase ports, approximately 26 percent purchased 1 SQF or FIX port, another 26 percent purchased between 2 and 5 ports, 21 percent purchased between 6 and 10 ports, and 28 percent purchased more than 11 ports. This means that any member has the option of reducing its purchase of port services without purchasing a substitute product by, for example, reconfiguring its systems to change the number of ports from 16 to 14.[66]

By way of comparison, the number of ports that MRX Members purchased in April 2022 also varies widely. For example, approximately 23 percent purchased 1 SQF, FIX or OTTO port,[67] another 43 percent purchased between 2 and 5 ports, 13 percent purchased between 6 and 10 ports, and 20 percent purchased more than 11 ports. MRX Members, similar to Phlx members, have the option of reducing their port purchases without purchasing a substitute product.

Chart 2 also shows that MRX has the smallest number of Members relative to its GEMX, ISE, NOM and Phlx affiliates, with approximately 40 members.[68] This demonstrates that customers can and will choose where to become members, need not become members of all exchanges, and do not need to become Members of MRX and instead may utilize a third party.[69]

With respect to market data, Chart 2 shows that approximately 34 firms subscribe to at least one market data product from MRX in the first quarter of 2022. This is the second lowest number of firms purchasing market data from the Nasdaq-affiliated options exchanges.

As explained above, Nasdaq proposes to introduce fees for five market data feeds: (i) Nasdaq MRX Depth of Market Data (aggregate quotes and orders at the top five price levels on MRX, and a consolidated view of tradable prices beyond the BBO); [70] (ii) the Nasdaq MRX Order Feed (new orders resting on the book); [71] (iii) Nasdaq MRX Top Quote Feed (best bid and offer position, with aggregated size based on displayable order and quote interest in the System; [72] (iv) Nasdaq MRX Trades Feed (last trade information along with opening price, daily trading volume, high and low prices for the day); [73] and (5) the Nasdaq MRX Spread Feed (orders for all Complex Orders, data aggregated at the top five price levels (BBO) on both the bid and offer side of the market and last trades information).[74]

The MRX Top Quote Feed and the MRX Trades Feed provide ''top-of-book'' information. Such information is typically of interest to a broader audience than Members trading on exchanges, including retail investors, media, portfolio managers, competing exchanges and others. For this broader audience, top-of-book data from one exchange is, in general, readily substitutable with the top-of-book information from another exchange,[75] and therefore the Exchange may lose customers if fees for top-of-book data are set too high.

The other three market data feeds, the Depth of Market Data feed, the Order Feed, and the Spread Feed are generally of more interest to Members trading on the Exchange relative to other market participants but, as noted above, MRX has the smallest market share at 1.8%, and any Member can choose to trade on another exchange if fees for these other three feeds exceed their value.

All of these statistics must be viewed in the context of a field with relatively low barriers to entry. MRX, like many new entrants to the field, offered membership, ports and market data for free to establish itself and gain market share. As new entrants enter the field, MRX can also expect competition from these new entrants. Those new entrants, like MRX, are likely to set membership, port, market data, or other fees to zero, increasing marketplace competition.

In summary, MRX membership, port and market data fees are subject to significant substitution-based competitive forces due to its consistently low percentage of market share, the relatively small number of purchasers for each product, and the purchasers that either cancelled or are reviewing their subscriptions. Implementation of the proposed fees is therefore consistent with the Act.

Fees for Membership, Ports and Market Data

Each of the proposed membership, port and data fees described below are in line with those of other markets. Setting a fee above competitors is likely to drive away customers, so the most efficient price-setting strategy is to set prices at the same level as other firms.

Options 7, Section 5—Membership

The Exchange's proposal to adopt membership fees is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, MRX's membership department reviews applicants to ensure that each application complies with the rules specified within MRX General 3 [76] as well as other requirements for membership.[77] Applicants must meet the Exchange's qualification criteria

[63] Market Makers on MRX are required to obtain one SQF port to submit quotes into MRX.

[64] A ''badge'' shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. *See* Options 1, Section 1(a)(5).

[65] A ''mnemonic'' shall mean an acronym comprised of letters and/or numbers assigned to Electronic Access Members. An Electronic Access Member account may be associated with multiple mnemonics. *See* Options 1, Section 1(a)(23).

[66] As noted above, one port (FIX) would be required to submit orders and one port (SQF) would be required to submit quotes.

[67] Phlx only offers FIX and SQF ports while MRX offers FIX, OTTO and SQF ports for order and quote entry.

[68] The data show that approximately 24 members purchased ports, while there are approximately 40 members of the Exchange. As discussed above, some members may use third-party ports to trade, so the low ratio of ports to memberships indicates that some members are doing so.

[69] Of course, that third party must itself become a member of MRX, so at least some market participants must become members of MRX for any trading to take place at all. Nevertheless, because some firms would be able to exercise the option of not becoming members, excessive membership fees would cause the Exchange to lose members.

[70] Nasdaq MRX Depth of Market Data Feed (''Depth of Market Feed'') provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. In addition, subscribers are provided with total aggregate quantity, Public Customer aggregate quantity, Priority Customer aggregate quantity, price, and side (*i.e.,* bid/ask). This information is provided for each of the top five price levels on the Depth Feed. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(1).

[71] *See* Options 3, Section 23(a)(2).

[72] *See* Options 3, Section 23(a)(3).

[73] *See* Options 3, Section 23(a)(4).

[74] *See* Options 3, Section 23(a)(5).

[75] *See, e.g.,* Securities Exchange Act Release No. 94466 (March 18, 2022), 87 FR 16811 (March 24, 2022) (SR–Nasdaq–2022–024) (explaining that top-of-book products from major exchanges are readily substitutable).

[76] MRX General 3 incorporates by reference Nasdaq General 3.

[77] The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. Approved Members would be required to comply with MRX's By-Laws and Rules and would be subject to regulation by MRX. The proposed membership fees are identical to membership fees on GEMX,[78] and are lower than similar fees assessed on other options markets.[79]

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. The Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership, ports and market data may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

Market Makers

Market makers play an important role on options exchanges as they provide liquidity. In options markets, registered market makers are assigned options series[80] and are required to quote in those options series for a specified time period during the day.[81] Typically, a lead or primary market maker[82] will be required to quote for a longer period of time during the day as compared to other market makers registered on an exchange.[83] Additionally, market makers are typically required to quote within a certain width on options markets.[84] Greater liquidity on options markets benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of market makers in turn facilitates tighter spreads. Market participants are attracted to options markets that have ample liquidity and tighter spreads in options series.

Trading Functionality

An exchange's trading functionality attracts market participants who may elect, for example, to submit an order into a price improving auction,[85] enter a complex order,[86] or utilize a particular order type.[87] Different options exchanges offer different trading functionality to their members. For example, with respect to priority and allocation of an order book, some options exchanges have price/time allocation,[88] some have a size pro-rata allocation,[89] while other exchanges offer both allocation models.[90] The allocation methodology on a particular options exchange's order book may attract certain market participants. Also, the manner in which some options markets structure their solicitation auction,[91] or opening process,[92] may be attractive to certain market participants. Finally, some exchanges have trading floors[93] which may accommodate trading for certain market participants or trading firms.[94]

Product Offerings

Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to a particular options venue. New products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as competitive alternatives, to existing investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product.[95]

Transaction Pricing

The pricing available on a particular exchange may impact a market participant's decision to submit order flow to a particular options venue. The options industry is competitive. 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.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges. For example, a market maker on MIAX assesses Market Makers a $3,000 one-time fee and then a tiered monthly fee from $7,000 for up to 10 classes to $22,000 for over 100 classes.[96] By comparison, under the proposed fee structure, a CMM can be granted access

[78] *See* GEMX Options 7, Section 6A (Access Fees).

[79] *See* Cboe's Fees Schedule. Cboe assesses permit fees as follows: Market-Maker Electronic Access Permit of $5,000 per month; Electronic Access Permits of $3,000 per month; and Clearing TPH Permit of $2,000 per month. *See also* Miami International Securities Exchange, LLC's (''MIAX'') Fee Schedule. MIAX assesses an Electronic Exchange Member Fee of $1,500 per month.

[80] *See* Phlx, ISE, GEMX, MRX, Nasdaq BX, Inc. (''BX'') and NOM Options 2, Section 3; Cboe Exchange, Inc. (''Cboe'') Rule 5.50; BOX Exchange LLC (''BOX'') Rule 8030; MIAX Rule 602; and NYSE Arca, Inc. (''NYSE Arca'') Rule 6.35–O.

[81] *See* ISE, GEMX and MRX, Phlx, BX and NOM Options 2, Section 5; Cboe Rule 5.52; BOX Rule 8050; MIAX Rule 604; and NYSE Arca Rule 6.37A–O.

[82] Options markets refer to the primary market maker on an exchange in several ways.

[83] *See* BX Options 2, Section 4; ISE, GEMX and MRX, and Phlx Options 2, Section 5; BOX Rule 8055; MIAX Rule 604; and NYSE Arca Rule 6.37A–O.

[84] *See* BX Options 2, Section 4; ISE, GEMX and MRX, Phlx and NOM Options 2, Section 5; and Cboe Rule 5.52; BOX Rule 8040.

[85] *See* ISE, GEMX, MRX, Phlx and BX Options 3, Section 13; MIAX Rule 515A; Cboe Rule 5.37; and BOX Rules 7150 and 7245.

[86] *See* Phlx and ISE Options 3, Section 14; MIAX Rule 518; Cboe Rule 5.33; BOX Rule 7240; and NYSE Arca Rule 6.91–O.

[87] *See* ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 7; MIAX Rule 615; Cboe Rule 5.6; BOX Rule 7110; and NYSE Arca Rule 6.62–O.

[88] *See* Cboe Rule 5.85; BOX Rule 7130; and NYSE Arca Rule 6.76–O.

[89] *See* Phlx, ISE, GEMX and MRX Options 3, Section 10; and BOX Rule 7135.

[90] *See* BX Options 3, Section 10. While BX's rule permits both price/time and size pro-rata allocation, all symbols on BX are currently designated as Price/Time. *See also* BOX Rules 7130 and 7135. MIAX's rule permits both Price-Time and Pro-Rata allocation. See also MIAX Rule 514.

[91] *See* ISE, GEMX and MRX Options 3, Section 11; NYSE American Rules 971.1NY and 971.2NY; and Cboe Rule 5.39.

[92] *See* ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 8; Cboe Rule 5.31, MIAX Rule 503, BOX Rule 7070, and NYSE Arca Rule 6.64–O.

[93] Today, Phlx, Cboe, BOX, NYSE Arca, and NYSE American LLC have a trading floor. Trading floors require an on-floor presence to execute options transactions.

[94] There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders.

[95] *See e.g.* options on the Nasdaq-100 Index® available on ISE, GEMX and Phlx and Cboe's Market Volatility Index®. Currently, MRX does not list any proprietary products.

[96] *See* Miami International Securities Exchange, LLC Fee Schedule at 20 and 21: *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012022.pdf.*

on the Exchange for as little as $950 per month (*i.e.,* a $100 access fee and an $850 trading right), and could quote in all options classes on the Exchange by paying the access fee and obtaining nine CMM trading rights for a total of $4,950 per month. The Exchange notes that its tiered model for CMM trading rights is consistent with the pricing practices of other exchanges, such as NYSE Arca, which charges $6,000 per month for the first market maker trading permit, as mentioned above, down to $1,000 per month for the fifth and additional trading permits, with various tiers in-between. Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right.

The Exchange does not believe that it is unfairly discriminatory to assess different fees for PMMs, CMMs, and EAMs. For PMMs on MRX, the fees required to access the Exchange are substantially lower than those of competing exchanges. For example, a PMM could quote on the Exchange for only $200 (*i.e.,* the access fee), compared with the minimum $6,000 per month trading permit fee charged by NYSE Arca. The Exchange notes that it is not proposing trading right fees for PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. Similarly, the Exchange is proposing only to charge the $200 access fee to EAMs as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers. The CMM Trading Right Fee is identical to GEMX.[97]

Membership fees are charged by nearly all exchanges, and all established exchanges with sufficient order flow. In 2022, MEMX LLC (''MEMX'') established a monthly membership fee of $200.[98] MEMX reasoned in that rule change that there is value in becoming a Member of the Exchange. MEMX stated that it believed that its proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.'' Moreover, ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.'' In this respect, MEMX is correct; a monthly membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may choose to become a member of one or more options exchanges based on the market participant's business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market. Most firms that actively trade on options markets are not currently members of MRX and do not purchase port services at MRX. Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also members of MRX (approximately 29%). The Exchange notes that no firm that is a member of MRX only. Few, if any, firms have become members or purchased port services at MRX, notwithstanding the fact that both MRX membership and ports are currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a member and connecting to the exchange, notwithstanding the fact that both are currently free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees or market data.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.[99] If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[100]

In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[101] or request sponsored access [102] through a member of an exchange in order to submit a trade directly to an options exchange.[103] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may

[97] *See* GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

[98] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). The Monthly Membership Fee is assessed to each active Member at the close of business on the first day of each month.

[99] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at *https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[100] MRX Members may elect to not route their orders by marking an order as ''do-not-route.'' In this case, the order would not be routed.

[101] Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

[102] Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[103] This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

determine one model is more cost efficient as compared to the alternatives.

Options 7, Section 6—Ports

The Exchange's proposal to amend port fees is reasonable, equitable and not unfairly discriminatory. The proposed port fees are similar to the fees assessed by GEMX,[104] and lower than the fees assessed by ISE. The proposed fees reflect the ongoing services provided to maintain and support the ports. In order to submit orders into MRX, only one order protocol is required, either FIX or OTTO. Quoting protocols are only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1. Similarly, only one quoting protocol (SQF) is necessary to quote on MRX. Depending on a Member's business model, one protocol may be better suited for a particular Member relative to another.[105] Members may elect to utilize both order entry protocols, depending on how they organize their business. Only one protocol is necessary to submit orders into MRX. However, Members may choose a greater number of order entry ports, depending on that Member's particular business model.[106] Similarly, only one account number is necessary per Member, although Members may choose to have additional accounts number to organize their business. The Exchange notes that FIX, OTTO, FIX DROP, the Clearing Trade Interface, and TradeInfo are available to all Members and may be utilized to obtain order information.

Members choose among the protocols based on their business workflow. The Exchange would uniformly assess the port fees to all Members and would uniformly apply monthly caps.

Ports are only available to MRX Members or service bureaus, and only an MRX Member may utilize a port.[107]

Once an applicant is approved for membership on MRX and becomes a Member, the Exchange assigns the Member a badge [108] and/or mnemonic [109] to submit quotes and/or orders to the Exchange through the applicable port. An MRX Member may have one or more accounts numbers and may assign badges or mnemonics to those account numbers. Membership approval grants a Member a right to exercise trading privileges on MRX, which includes the submission of orders and/or quotes into the Exchange through a secure port by utilizing the badge and/or mnemonic assigned to a specific Member by the Exchange. The Exchange utilizes ports as a secure method for Members to submit orders into the Exchange's match engine and for the Exchange to send messages related to those orders to its Members.

MRX is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, MRX takes measures to ensure access is monitored and maintained with various controls. Ports are a method utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member of MRX, and is approved for membership by MRX, the Member is granted trading rights to enter orders into MRX through secure ports.

As noted herein, there is no legal or regulatory requirement that a market participant become a Member of MRX, or, if it is a Member, to purchase port services beyond the one quoting protocol or one order entry protocol necessary to quote or submit orders on MRX.[110] As noted above, Members may freely choose to rely on one or many ports, depending on their business model. A Member can only submit interest (quotes or orders) through a secure port. Only one port is required to submit an order (FIX or OTTO) to MRX and only one port is required to submit a quote (SQF) to MRX. A market participant may decide, in the alternative, not to become a member of an exchange and instead utilize a third party.[111]

The decision as to what types and number of ports to buy, like the decision to become a member of an exchange, is made at the beginning of that relationship, but that decision may be altered at any time as a market participant's business strategy evolves or the manner in which the market participant interacts with the exchange changes over time. As noted herein, only one protocol is required to submit orders. Depending on a Member's business model, one protocol may be better suited for a Member than another. Port selection is often made at the beginning of a trading relationship, like the decision whether to become a member, but a member is not ''locked'' into a particular number or type of ports over the course of the business relationship.

Options 7, Section 7—Market Data

The Exchange's proposal to adopt market data fees is reasonable, equitable and not unfairly discriminatory. The five market data feeds at issue here—the Depth of Market Feed,[112] Order Feed,[113] Top Quote Feed,[114] Trades Feed,[115] and Spreads Feed [116]—are used throughout the market by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis. With respect to the proposed Non-Display Enterprise License, the Exchange notes that enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory method of distributing market data. Enterprise licenses are widely employed by options exchanges, and the proposal here is typical of such licenses.

[104] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

[105] For example, while the FIX protocol permits routing capability the OTTO protocol does not permit routing capability. This distinction may cause a Member to elect a certain protocol based on whether they want the order executed locally or have the option to allow the order to route. The OTTO Port offer lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior.

[106] For example, a Member may desire to utilize multiple FIX or OTTO ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[107] Service bureaus may obtain ports on behalf of members. The Exchange would only assign a badge and/or mnemonic to a Member to be utilized to submit quotes and/or orders to the Exchange.

[108] See note 64, *supra.*

[109] See note 65, *supra.*

[110] Only Members and service bureaus may request ports on MRX, and only Members may utilize ports on MRX through their assigned badge or mnemonic. *See* Options 1, Section 1(a)(5) and (23).

[111] In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange as described above.

[112] The Depth of Market Feed provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options.

[113] The Order Feed provides information on new orders resting on the book (*e.g.* price, quantity and market participant capacity), and also announces all auctions.

[114] The Top Quote Feed calculates and disseminates MRX's best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information along with opening price, daily trading volume, high and low prices for the day.

[115] The Trades Feed displays last trade information along with opening price, daily trading volume, high and low prices for the day.

[116] The Spread Feed consists of: (1) Options orders for all Complex Orders (*i.e.,* spreads, buy-writes, delta neutral strategies, etc.); (2) data aggregated at the top five price levels (BBO) on both the bid and offer side of the market; (3) last trades information.

Market data, often mistakenly characterized as the ''exhaust'' of an exchange, is in fact the engine that drives liquidity: Firms are attracted by high levels of liquidity, diverse offerings and bids and offers close to the NBBO. Market data, unlike membership or ports, is not sold only to members, but rather is open to investors generally.

Nasdaq is subject to direct competition in the sale of market data. As explained above, Nasdaq proposes to introduce fees for both top-of-book and depth-of-book feeds. Top-of-book feeds are generally of interest to a broader audience that can readily substitute the top-of-book feed of one exchange with that of another. Depth-of-book feeds are, for the most part, of more interest to Members trading on the Exchange than other market participants but MRX has the smallest market share at 1.8%, and any Member can choose to trade on another exchange if fees for these other three feeds exceed their value.

Moreover, MRX lists no proprietary options products that are entirely unique to MRX. Firms can substitute MRX market data with feeds from exchanges that provide a high degree of functionality, including complex orders. Full market data options are available, for example, from Cboe,[117] MIAX,[118] and NYSE Arca Options.[119]

Top-of-book data—last trade and best bid and offer information—is sold broadly to a wide of market participants, including the media, the general investing public, retail broker-dealers, regulatory agencies, and many others in addition to broker-dealers routing order flow. Because MRX does not list options on products that are exclusively available on MRX, then these same types of general-interest consumers of data can substitute MRX data with data from any exchange that lists such multiply-listed options, or through OPRA, in the same sense that consumers of top-of-book data on equity exchanges compete with other sellers of top-of-book data.[120] Top-of-book data is easily substitutable by many of its users, and therefore is subject to particularly fierce competition.

All of this competition must be understood in the context of the fact that all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

* * * * *

After 6 years, MRX proposes to commence assessing membership, port, and market data fees, just as all other options exchanges.[121] The introduction of these fees will not impede a Member's access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. 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. 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.

Options 7, Section 5—Membership

The proposed membership fees are identical to membership fees assessed by GEMX.[122] The proposed fees are designed to reflect the benefits of the technical, regulatory, and administrative services provided to a Member by the Exchange, and the fees remain competitive with similar fees offered on other options exchanges. The Exchange does not believe that assessing different fees for PMMs, CMMs, and EAMs creates an undue burden on competition.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges.[123] Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right. The Exchange notes that it is not proposing trading right fees for PMMs as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting. Additionally, as noted herein, PMMs have higher quoting obligations as compared to CMMs.[124]

Options 7, Section 6—Ports

The proposed port fees are similar to port fees assessed by GEMX [125] for similar connectivity. As a consequence, competition will not be burdened by the proposed fees. In order to submit orders into MRX, only one order protocol is required, either FIX or OTTO. Likewise, only one quoting protocol, SQF, is necessary to quote on MRX. Finally, only one account number is necessary per Member. FIX, and OTTO Ports, as well TradeInfo, are available to all Members and may be utilized to cancel orders. Further, FIX, and OTTO Ports, as well TradeInfo, are available to all Members and may be utilized to cancel orders and FIX DROP, the Clearing Trade Interface, and TradeInfo are available to all Members and may be utilized to obtain order information. These different protocols are not all necessary to conduct business on MRX. Market participants may also connect to

[117] *See* Cboe DataShop, available at *https://datashop.cboe.com/.*

[118] *See* MIAX Options Market Data & Offerings, available at *https://www.miaxoptions.com/market-data-offerings.*

[119] *See* NYSE Options Markets, available at *https://www.nyse.com/options.*

[120] *See* Securities Exchange Act Release No. 94466 (March 18, 2022), 87 FR 16811 (March 24, 2022) (SR–NASDAQ–2022–024) (explaining that ''[a]ll of the top-of-book proprietary products offered by the exchanges are readily substitutable for each other.'' ''Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation.'' ''All major exchange groups compete to sell top-of-book data.'').

[121] Today, MRX is the only options exchange that does not assess membership, port, and market data fees.

[122] *See* GEMX Options 7, Section 6.A. (Access Fees) and Section 6.B. (CMM Trading Rights Fees).

[123] *See* NYSE Arca Fees and Charges, General Options and Trading Permit (OTP) Fees (comparing CMM Trading Rights Fees to the Arca Market Maker fees).

[124] *See* MRX Options 2, Section 5. PMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce. CMMs are not required to enter quotations in the options classes to which it is appointed, however if a CMM initiates quoting in an options class, the CMM, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce.

[125] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

third parties instead of directly to the Exchange.

With respect to the higher fees assessed for SQF Ports and SQF Purge Ports, the Exchange notes that only Market Makers may utilize these ports. Market Makers are required to provide continuous two-sided quotes on a daily basis,[126] and are subject to various obligations associated with providing liquidity.[127] As a result of these quoting obligations, the SQF Port and SQF Purge Port are designed to handle higher throughput to permit Market Makers to bundle orders to meet their obligations. The technology to permit Market Makers to submit a greater number of quotes, in addition to the various risk protections [128] afforded to these market participants when quoting, accounts for the higher SQF Port and SQF Purge Port fees. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. Also, an increase in the activity of Market Makers in turn facilitates tighter spreads.

Options 7, Section 7—Market Data

The initiation of market data fees will not impose an undue burden on inter-market competition. Since February 2016, MRX has disseminated market data without charging a fee, allowing MRX time to build order flow. Now that order flow has increased from approximately 0.2 percent to 1.8 percent of the market, MRX proposes charging fees that reflect the value of that data.

Permitting MRX to charge a fee for its data does not impose any burden on the ability of other options exchanges to compete. Each of the remaining 15 options exchanges currently sells its market data, and is capable of modifying its fees response to the proposed changes by MRX. Moreover, allowing MRX, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share.[129] 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.[130] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2022–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2022–04 and should be submitted on or before June 8, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[131]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10617 Filed 5–17–22; 8:45 am]

BILLING CODE 8011–01–P

[126] *See* MRX Options 2, Section 5.

[127] *See* MRX Options 2, Section 4.

[128] *See* MRX Options 3, Section 15(a)(3). Market Makers are offered risk protections to permit them to manage their risk more effectively.

[129] The Exchange notified market participants of the new fees on December 20, 2021. *See* Data News #2021–11 (December 20, 2021, available at *http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2021-11.* As such, market participants have had ample notice of the proposed fee changes and will be able to adjust their purchases of exchange services accordingly.

[130] 15 U.S.C. 78s(b)(3)(A)(ii).

[131] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34583; File No. 812–15315]

First Eagle Alternative Capital BDC, Inc., et al.

May 13, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: First Eagle Alternative Capital BDC, Inc., First Eagle Credit Opportunities Fund, First Eagle Investment Management, LLC, First Eagle Alternative Credit, LLC, First Eagle Alternative Credit EU, LLC, First Eagle Credit Opportunities Fund SPV, LLC, First Eagle Alternative Capital Holdings, Inc., First Eagle Direct Lending Fund I, LP, First Eagle Direct Lending Fund I (EE), LP, First Eagle Direct Lending Fund I (Parallel), LP, First Eagle DL Fund I Aggregator LLC, NewStar Arlington Senior Loan Program LLC, First Eagle Berkeley Fund CLO LLC, First Eagle Commercial Loan Funding 2016–1 LLC, First Eagle Commercial Loan Originator I LLC, NewStar Fairfield Fund CLO Ltd., First Eagle Warehouse Funding I LLC, First Eagle Dartmouth Holding LLC, First Eagle Direct Lending Fund III LLC, First Eagle Direct Lending Co-Invest III (E) LLC, First Eagle Direct Lending Co-Invest III LLC, First Eagle Direct Lending Fund III (A) LLC, First Eagle Direct Lending Fund IV, LLC, First Eagle Direct Lending Levered Fund IV, LLC, First Eagle Direct Lending IV Co-Invest, LLC, First Eagle Direct Lending Levered Fund IV SPV, LLC, Lake Shore MM CLO I Ltd., Lake Shore MM CLO II Ltd., Lake Shore MM CLO III LLC, Lake Shore MM CLO IV LLC, First Eagle Direct Lending V–A, LLC, First Eagle Direct Lending V–B, LLC, First Eagle Direct Lending V–B SPV, LLC, First Eagle Direct Lending V–C SCSP, South Shore V LLC, South Shore VI LLC, Wind River 2014–3K CLO Ltd., Wind River 2016–1K CLO Ltd., Wind River 2013–1 CLO Ltd., Wind River 2013–2 CLO Ltd., Wind River 2014–1 CLO Ltd., Wind River 2014–2 CLO Ltd., Wind River 2014–3 CLO Ltd., Wind River 2015–1 CLO Ltd., Wind River 2016–2 CLO Ltd., Wind River 2017–1 CLO Ltd., Wind River 2017–3 CLO Ltd., Wind River 2017–4 CLO Ltd., Wind River 2018–1 CLO Ltd., Wind River 2018–2 CLO Ltd., Wind River 2018–3 CLO Ltd., Wind River 2019–1 CLO Ltd., Wind River 2019–2 CLO Ltd., Wind River 2019–3 CLO Ltd., Wind River 2020–1 CLO Ltd., Wind River 2021–1 CLO Ltd., Wind River 2021–2 CLO Ltd., Wind River 2021–3 CLO Ltd., Wind River 2021–4 CLO Ltd., Bighorn III, Ltd., Bighorn IV, Ltd., Bighorn VI, Ltd., Bighorn VII, Ltd., Bighorn VIII, Ltd., Bighorn X, Ltd., NewStar Commercial Loan Funding 2017–1 LLC, First Eagle Clarendon Fund CLO LLC, NewStar Exeter Fund CLO LLC, Arch Street CLO, Ltd., First Eagle BSL CLO 2019–1 Ltd., Hull Street CLO, Ltd., Longfellow Place CLO, Ltd., Staniford Street CLO, Ltd., First Eagle Strategic Funding, LLC.

FILING DATES: The application was filed on March 31, 2022, and amended on April 29, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, June 7, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: David Blass, Esq. at *David.Blass@stblaw.com,* Rajib Chanda at *Rajib.Chanda@stblaw.com* and Christopher Healey at *Christopher.Healey@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated April 29, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10696 Filed 5–17–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94898; File No. SR–LCH SA–2022–003]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the Restructuring Notification Process for Swaptions

May 12, 2022.

I. Introduction

On March 18, 2022, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), 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 proposed rule change to amend its CDS Clearing Supplement (the ''Clearing Supplement'') and certain CDS Clearing Procedures (the ''Procedures'').[3] The proposed rule change was published for comment in the **Federal Register** on March 30, 2022.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

As detailed below, the amendments to the Clearing Supplement and the Procedures would (A) establish a new delegation requirement for Clearing Members in the case of a restructuring affecting an option to purchase Index CDS (an ''Index Swaption''); (B) limit LCH's liability to Clearing Members in light of this new requirement; (C) update certain provisions related to the exercise of Index Swaptions; (D) require Clearing Members and Clients consent to disclosure of their contact information in connection with the restructuring or exercise of Index Swaptions; and (E) correct typographical errors.

A. New Delegation Requirement

The proposed rule change would require that Clearing Members delegate to their Clients the authority to send and receive certain notices on their behalf. This new requirement would apply to a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rule Book, Clearing Supplement, or Procedures, as applicable.

[4] Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change to Relating to the Restructuring Notification Process for Swaptions, Exchange Act Release No. 94505 (March 24, 2022); 87 FR 18416 (March 30, 2022) (SR–LCH SA–2022–003) (''Notice'').

Client's cleared transaction in an Index Swaption where the underlying Index CDS is being restructured due to an event affecting one of its reference entities. Generally, this delegation requirement would mirror the delegation mechanism that currently applies to Clients in exercising their Index Swaptions.[5]

To establish this new requirement, the proposed rule change would amend Part C of the Clearing Supplement and Appendix VIII thereto. Part C sets out the terms applicable to a cleared Index Swaption transaction between a Clearing Member and LCH SA, while Appendix VIII sets out the terms applicable to the corresponding Index Swaption transaction between that Clearing Member and its Client. For example, the proposed rule change would add to Part C new defined terms, such as Restructuring Delegation Beneficiary (which would mean a Client designated by a Clearing Member to send and receive Credit Event Notices and Notices to Exercise Movement Option on its behalf). The proposed rule change similarly would revise existing defined terms, revise existing references to conform to new defined terms or changes in existing defined terms, and revise existing references to take into account the re-numbering of sections.

In addition to these revisions to defined terms and references, the proposed rule change would set out the delegation requirement in a new Section 5.7 of Part C. This new section would apply to Client Cleared Transactions in Index Swaptions that are being restructured, and it would require Clearing Members designate their Clients to act on their behalf with respect to sending and receiving certain notices related to the restructuring. After a Clearing Member designates its Client, LCH SA would deem any delivery or receipt of a restructuring notice by the designated Client to constitute the delivery or receipt of a valid notice by the Clearing Member. LCH SA would treat any reference in the Clearing Supplement to a notice being delivered to or by a Clearing Member accordingly. This new section would generally mirror the provisions of current Section 6.4, which requires that Clearing Members designate their relevant Clients to act on their behalf with respect to exercising and abandoning Index Swaptions that are Client Cleared Transactions. A Clearing Member could withdraw the designation as long as there is no Swaption Restructuring Cleared Transaction registered in the Client Trade Account of the relevant Client.[6]

The proposed rule change would make similar amendments to the provisions found in Appendix VIII of Part C, which must be incorporated into an Index Swaption transaction between a Clearing Member and its Client (collectively, the ''Mandatory Provisions''). For example, the proposed rule change would replace current Mandatory Provision 7 with a new provision that would require a Clearing Member to designate its Client in accordance with new Section 5.7 of Part C discussed above. New Mandatory Provision 7 also would require Clients to deliver Credit Event Notices or Notices to Exercise Movement Option directly to its counterparty, and would explain what would happen if the Client does not provide the notification within the required timeframe.

In addition to the changes to Part C and Appendix VIII of the Clearing Supplement, the proposed rule change would amend Section 5 of the Procedures to specify how Clearing Members would notify LCH SA of the delegation. The proposed rule change would do so by amending 5.19, which currently sets out the process for delegations related to exercise of Index Swaptions, so that it applies to delegations related to restructuring as well. Under amended Section 5.19, a Clearing Member must notify LCH SA of the delegation by sending a completed notification form, and a Clearing Member may withdraw the delegation only if no Swaption Restructuring Cleared Transaction is registered in the Client Trade Account of the relevant Restructuring Delegation Beneficiary.

B. Limitation of Liability

To complement the new delegation requirement, the proposed change would add new Section 13(c) to Part C of the Clearing Supplement. Under new Section 13(c), LCH SA would have no liability to a Clearing Member for any loss, cost or expense arising out of any failure of a Client to perform its obligations or in connection with the delivery of notices related to a restructuring. Section 13(c) would mirror existing Section 13(b), under which LCH SA has no liability to a Clearing Member for any loss, cost or expense arising out of any failure of a Client to perform its obligations in connection with a delegation of authority to exercise Index Swaptions.

C. Exercise Provisions

Unrelated to the new delegation requirement, the proposed rule change also would amend certain existing provisions found in Section 6 of Part C. Section 6 of Part C describes the process for exercising Index Swaptions and the sending and receiving of notices related to exercise. The purchaser of an Index Swaption exercises it through an Exercise Matched Pair, which consists of a buyer and seller paired by LCH SA. Section 6.1(a) requires that, upon the creation of an Exercise Matched Pair, LCH SA notify the buyer and seller, but it prohibits LCH SA from providing any detail with respect to their identities. The proposed rule change would delete this prohibition as duplicative in light of existing Section 6.1(b). That section dictates the circumstances in which LCH SA may provide the buyer and seller details about each other's identity. LCH SA may only do so through a Protected Exercise Matched Pair Report, and it may only provide access to this report when there is a failure of LCH SA's electronic platform for exercising Index Swaptions. Finally, the proposed rule change would add at the end of 6.1 a new paragraph to state that a Clearing Member expressly consents to the disclosure of its information in accordance with this section through the Protected Exercise Matched Pair Report.

Section 6.5 describes the actions that LCH SA would take when there is a failure of LCH SA's electronic platform for exercising Index Swaptions. As mentioned above, where there is such a failure, LCH SA would provide access to the Protected Exercise Matched Pair Report. The proposed rule change would move from Section 6.1 to Section 6.5 language that requires LCH SA to provide contact information to Index Swaption buyers and sellers comprised within an Exercise Matched Pair. As a result of this change, where there is a failure of LCH SA's electronic platform for exercising Index Swaptions, LCH SA would provide each Clearing Member (or Client to whom the Clearing Member has delegated authority to exercise) with the other's address, fax number, telephone number, and contact email. LCH SA would provide this information in addition to providing access to the Protected Exercise Matched Pair Report. Finally, as part of this change, the proposed rule change would amend references to the Protected Exercise Matched Pair Report throughout Part C. LCH is making this change to accommodate differences in how it

[5] *See* Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Implementation of Electronic Exercise Platform (Oct. 11, 2018), Exchange Act Release No. 84410 (Oct. 17, 2018) (SR–LCH SA–2018–004).

[6] The proposed rule change would make a similar change to Section 6.4, which specifies when a Clearing Member may withdraw a delegation related to exercise of Index Swaptions.

stores Clearing Members' and Clients' contact information as required by applicable law.

D. Consents to Disclosure of Contact Information

As part of the amendments to the Clearing Supplement, the proposed rule change also would add provisions that state expressly that Clearing Members and Clients consent to the disclosure of their contact information in connection with providing notices related to the restructuring of Index Swaptions and the exercise of Index Swaptions. These provisions would help to ensure that LCH SA is able to disclose this information under applicable law.

E. Correcting Typographical Errors

Finally, the proposed rule change would correct typographical errors in Part C of the Clearing Supplement and the Mandatory Provisions found in Appendix VIII.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(17) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Clearing Supplement and the Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at LCH SA.

The Commission believes that the changes to implement the new delegation requirement, as discussed in Part II.A above, should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA. Under the delegation requirement, a Client would send and receive notices related to a restructuring affecting one of its Index Swaptions directly, rather than relying on its Clearing Member. The Commission believes these changes therefore would reduce the operational burden on Clearing Members in clearing Index Swaptions for their Clients. The Commission believes reducing the operational burden on Clearing Members in clearing Index Swaptions for their Clients could in turn encourage more Clearing Members to offer such clearing service to their Clients, and therefore could promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA.

For similar reasons, the Commission believes that the changes discussed in Parts II.B and II.D above should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA. The Commission believes that limiting LCH SA's liability in connection with the new delegation requirement should reduce the risk to LCH SA in relying on Clients to satisfy their obligations under the delegation. The Commission believes that doing so should enable LCH SA to implement the new delegation requirement. The Commission similarly believes that having Clearing Members and Clients consent to the disclosure of their contact information in connection with providing notices related to the restructuring of Index Swaptions should enable LCH SA to implement the new delegation requirement. The Commission believes such consent would enable LCH SA to disclose the contact information and that LCH SA may need to disclose such information in order for Clients to send notices related to a restructuring directly to other Clearing Members and Clients. The Commission therefore believes that both of these changes should facilitate LCH SA's ability to implement the new delegation requirement, which, for the reasons discussed above, the Commission believes should promote the prompt and accurate clearance and settlement of Index Swaptions transactions at LCH SA.

The Commission further believes that the changes related to the exercise of Index Swaptions, including having Clearing Members and Clients consent to the disclosure of their contact information in connection with exercise, as discussed in Parts II.C and II.D above, should promote the prompt ad accurate clearance and settlement Index Swaptions at LCH SA. The Commission believes that the changes described in Part II.C above would help to clarify the content of the Exercise Matched Pair Report and that having Clearing Members and Clients consent to the disclosure of their contact information, as described in Part II.D above, should enable LCH SA to provide contact information, including through the Exercise Matched Pair Report. The Commission believes that where there is a failure of LCH SA's electronic platform for exercising Index Swaptions, Clearing Members and Clients could use the information in the Exercise Matched Pair Report, and the other contract information provided by LCH SA, to send notices related to exercise. The Commission therefore believes these changes should help to ensure that buyers of Index Swaptions are able to exercise their positions even where there is a failure of LCH SA's electronic exercise platform. The Commission believes that doing so should promote the prompt and accurate clearance and settlement of Index Swaptions at LCH SA.

Finally, the Commission believes that correcting typographical errors, as discussed in Part II.E above, should help to ensure the clarity and accuracy of the Clearing Supplement, and therefore should promote the prompt and accurate clearance and settlement of transactions using the Clearing Supplement.

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(17)

Rule 17Ad–22(e)(17) requires that LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to manage its operational risks by, among other things, ensuring that systems have a high degree of operational reliability.[12] The Commission believes that the new delegation requirement would increase the resiliency of the restructuring process for Index Swaptions. The Commission believes that making each Client responsible for sending and receiving notices related to exercise would delegate to Clients a responsibility that is currently concentrated in Clearing Members. Each Client would send and receive notices, rather than one Clearing Member bearing this responsibility for all of its Clients. As a result, the Commission believes this aspect of the proposed rule change should reduce the potential disruption that could result from a

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(17).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(17).

Clearing Member's operational failure, and therefore should increase the operational reliability of the restructuring process for Index Swaptions.

The Commission further believes that the changes discussed in Parts II.C and II.D above should enable LCH SA to provide contact information, including through the Exercise Matched Pair Report, where there is a failure of LCH SA's electronic exercise platform. The Commission therefore believes that these changes should help to ensure that buyers of Index Swaptions are able to exercise their positions even where there is a failure of LCH SA's electronic exercise platform, and accordingly, these aspects of the proposed rule should increase the operational reliability of the exercise process for Index Swaptions.

Therefore, the Commission finds that these aspects of the proposed rule change are consistent with Rule 17Ad–22(e)(17).[13]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[14] and Rule 17Ad–22(e)(17) thereunder.[15]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[16] that the proposed rule change (SR–LCH SA–2022–003) be, and hereby is, approved.[17]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10613 Filed 5–17–22; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.17Ad–22(e)(17).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(17).

[16] 15 U.S.C. 78s(b)(2).

[17] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94899; File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, SR–NYSENAT–2021–23]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Offer Wireless Connectivity to CME Group Data and Establish Associated Fees

May 12, 2022.

On November 3, 2021, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Exchanges'') each 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 amend their respective fee schedules to offer wireless connectivity to CME Group, Inc. (''CME Group'') market data (''CME Group Data'') and establish associated fees. Each proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19b(3)(A) of the Act.[3] The proposed rule changes were published for comment in the **Federal Register** on November 18, 2021.[4] On December 17, 2021, the Commission issued an order suspending the proposed rule changes and instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission has received comment letters on the proposals.[6]

Section 19(b)(2) of the Act[7] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule changes were published for comment in the **Federal Register** on November 18, 2021.[8] The 180th day after publication of the Notices is May 17, 2022. The Commission is extending the time period for approving or disapproving the proposals for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the proposed rule changes along with the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates July 16, 2022 as the date by which the Commission should either approve or disapprove the proposed rule changes (File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, SR–NYSENAT–2021–23).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10615 Filed 5–17–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release Nos. 93563 (November 12, 2021), 86 FR 64561 (November 18, 2021) (SR–NYSE–2021–67); 93561 (November 12, 2021), 86 FR 64580 (November 18, 2021) (SR–NYSEAMER–2021–43); 93564 (November 12, 2021), 86 FR 64570 (November 18, 2021) (SR–NYSEArca–2021–97); 93565 (November 12, 2021), 86 FR 64556 (November 18, 2021) (SR–NYSECHX–2021–17); and 93567 (November 12, 2021), 86 FR 64576 (November 18, 2021) (SR–NYSENAT–2021–23) (collectively, the ''Notices'').

[5] *See* Securities Exchange Act Release No. 93810 (December 17, 2021), 86 FR 73026 (December 23, 2021).

[6] *See* letter dated January 13, 2022 from Jim Considine, Chief Financial Officer, McKay Brothers, LLC to Vanessa Countryman, Secretary, Commission and letter dated April 13, 2022 from Martha Redding, Associate General Counsel, Corporate Secretary, NYSE Group, Inc. (''NYSE Group'') to Vanessa Countryman, Secretary, Commission. All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-67/srnyse202167.htm.* NYSE Group filed comment letters on behalf of all of the Exchanges.

[7] 15 U.S.C. 78s(b)(2).

[8] *See supra* note 4.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(57).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0011]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Homeland Security (DHS). The purpose of which is to set forth the terms, conditions, and safeguards under which DHS will disclose information to SSA in order to identify noncitizens who leave the United States voluntarily and noncitizens who are removed from the United States.

DATES: The deadline to submit comments on the proposed matching program is June 17, 2022. The matching program will be applicable on July 19, 2022, or once a minimum of 30 days after publication of this notice have elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2022–0011 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2022–0011 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION: For functions of this matching program, ''noncitizen'' is synonymous with ''noncitizen'' as defined in section 1101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), meaning ''any person not a citizen or national of the United States.''

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

PARTICIPATING AGENCIES:

SSA and DHS.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

This Agreement is executed under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, Public Law (Pub. L.) 100–503, 102 Stat. 2507 (1988), as amended, and the Computer Matching and Privacy Protection Amendments of 1990, and the regulations and guidance promulgated thereunder.

The CMPPA applies when computerized comparisons of Privacy Act-protected records contained within a Federal agency's databases and the records of another organization are made in order to determine an individual's eligibility to receive a Federal benefit. The CMPPA requires the parties participating in a matching program to execute a written agreement specifying the terms and conditions under which the matching program will be conducted.

Legal authorities for the disclosures under this Agreement are covered by various sections of the Social Security Act (Act).

- Section 202(n)(1) of the Act [42 U.S.C. 402(n)] requires the Secretary of Homeland Security to notify the Commissioner of Social Security when certain individuals are removed from the United States under sections 212(a)(6)(A) and 237(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(6)(A) or 1227(a);
- Section 1611(a)(1) of the Act [42 U.S.C. 1382c(a)(1)]concerns the definition of eligible individuals;
- 8 U.S.C. 1611 mandates that non-qualified noncitizens (as defined in 8 U.S.C. 1641) do not receive Federal public benefits;
- 8 U.S.C. 1612 also places some limits on qualified noncitizens' ability to receive public benefits;
- Section 1631(e)(1)(B) of the Act [42 U.S.C. 1383(e)(1)(B)] requires SSA to verify declarations of applicants for and recipients of Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount;
- Section 1631(f) of the Act [42 U.S.C. 1383(f)] requires Federal agencies to provide SSA with information necessary to verify SSI eligibility or benefit amounts or to verify other information related to these determinations.

A. Noncitizens Who Leave the United States, Without Regard to Immigration Proceedings. Resident noncitizens eligible for SSI may receive payments for any month in which they reside in the United States. For purposes of SSI, the United States means, geographically, the 50 States, the District of Columbia, and the Northern Mariana Islands. 20 CFR 416.1603(c). Under section 1611(f) of the Act, an individual is ineligible for SSI benefits for any month during all of which he or she is outside the United States. Section 1611(f) of the Act further states that if an individual is absent from the United States for 30 consecutive days, SSA will treat the individual as remaining outside the United States until he or she has been in the United States for a period of 30 consecutive days. See 42 U.S.C. 1382(f) and 20 CFR 416.1327.

B. Noncitizens Who are Removed, Voluntarily Depart, or Voluntarily Return to Their Home Country from the United States. The Social Security Protection Act of 2004, Public Law 108–203, amended the Act to expand the number of individuals who are subject to nonpayment of Social Security benefits. Thus, section 202(n)(1)(A) of the Act (42 U.S.C. 402(n)(1)(A)) prohibits payment of retirement or disability insurance benefits to number holders (NH) who have been removed from the United States on certain grounds specified under section 237(a) or section 212(a)(6)(A) of the INA (8 U.S.C. 1182(a)(6)(A), 1227(a)). SSA will not pay monthly retirement or disability benefits to such NHs for the month after the month in which the Secretary of Homeland Security notifies SSA of the NH's removal or before the month in which the NH is subsequently lawfully admitted to the United States for permanent residence.

Section 202(n)(1)(B) of the Act (42 U.S.C. 402(n)(1)(B)) prohibits payment

of auxiliary or survivors benefits to certain individuals who are entitled to such benefits on the record of a NH who has been removed from the United States on certain grounds as specified in the above paragraph. Nonpayment of benefits is applicable for any month such auxiliary or survivor beneficiary is not a citizen of the United States and is outside the United States for any part of the month. Benefits cannot be initiated (or resumed) to such auxiliary or survivor beneficiaries who are otherwise subject to nonpayment under these provisions until the removed NH has been subsequently lawfully admitted for permanent residence to the United States.

In addition, certain individuals may be subject to suspension of their SSI payments under section 1614(a)(1)(B)(i) of the Act (42 U.S.C. 1382c(a)(1)(B)(i)), which provides, in part, that an SSI recipient must be a resident of the United States.

PURPOSE(S):

This matching program establishes the conditions under which DHS will disclose information to SSA in order to identify noncitizens who leave the United States voluntarily and noncitizens who are removed from the United States. These noncitizens may be subject to suspension of payments or nonpayment of benefits or both, and recovery of overpayments. SSA will use DHS data to determine if suspension of payments, nonpayment of benefits, and/or recovery of overpayments, is applicable.

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in this matching program are:

1. Noncitizens who leave the United States voluntarily and are subject to suspension or non-payment of SSI.

2. Noncitizens who are removed from the United States, voluntarily depart, or voluntarily return to their home country from the United States, and are subject to nonpayment of retirement or disability insurance benefits (RSDI). In addition, certain individuals may be subject to suspension of their SSI payments if they are not residents of the United States. If an SSI recipient is not a qualified noncitizen within the statutory definitions, they are ineligible for SSI benefits. A qualified noncitizen may have limited eligibility.

CATEGORIES OF RECORDS:

1. Noncitizens Who Leave the United States Voluntarily. The data elements furnished by the DHS/U.S. Citizenship and Immigration Service's (USCIS) Benefits Information System (BIS) are the noncitizen's name, SSN, date of birth (DOB), Noncitizen Registration Number (''A'' number), date of departure, and expected length of stay. To verify the SSN, SSA will match BIS data against the names, DOB, and SSNs in SSA's Enumeration System. SSA will store and match verified SSNs against the same elements in the SSR files.

2. Noncitizens Who Are Removed From the United States. The data elements furnished from DHS/U.S. Immigration and Customs Enforcement's (ICE) Enforcement Integrated Database (EID) are the individual's name and alias (if any), Social Security number (SSN) (if available), DOB, country of birth, country to which removed, date of removal, the final removal charge code, and DHS' ''A'' number.

To verify the SSN, SSA will match EID data against records in its Enumeration System. SSA matches the verified SSNs against the existing Master Beneficiary Record (MBR) and SSR records to locate removals (and their dependents or survivors, if any) who have already claimed and are currently receiving RSDI, SSI benefits, or both. SSA will retain the data verified through this matching program on the MBR and SSR, to be associated with future claims activity.

SYSTEM(S) OF RECORDS:

1. Noncitizens Who Leave the United States Voluntarily (SSI). DHS will disclose to SSA information from the DHS/USCIS–007 Benefits Information System, 84 FR 54622 (November 12, 2019). DHS will electronically format the BIS data for transmission to SSA. BIS data is comprised of data collected from USCIS immigration systems. USCIS data used to accomplish this matching agreement currently comes from the CLAIMS 3 database.

SSA will match the DHS information with SSA's systems of records: Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System), 60–0058, last fully published at 87 FR 263 (January 4, 2022);

In addition, SSA will match the DHS information with the Supplemental Security Income Record and Special Veterans Benefits, 60–0103, last fully published on January 11, 2006 (71 FR 1830), and amended on December 10, 2007 (72 FR 69723), July 3, 2018 (83 FR 31250–51), and November 1, 2018 (83 FR 54969).

2. Noncitizens Who are Removed from the United States. DHS will retrieve information on removed noncitizens from the DHS/ICE EID database and electronically format it for transmission to SSA, and as covered by DHS/ICE–011–Criminal Arrest Records and Immigration Enforcement Records (CARIER), published October 19, 2016 (81 FR 72080), to the extent that those records pertain to individuals under the Privacy Act or covered persons under the Judicial Redress Act of 2015 (5 U.S.C. 552a, note).

The SSA systems of records used in the match program are include:

- Master Files of SSN Holders and SSN Applications 60–0058, last fully published at 87 FR 263 (January 4, 2022);
- Supplemental Security Income Record and Special Veterans Benefits (SSR) (60–0103), last fully published at 71 FR 1830 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007), 83 FR. 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018);
- Master Beneficiary Record (MBR) (60–0090), last fully published at 71 FR 1826 (January 11, 2006), and updated at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018); and
- Prisoner Update Processing System (PUPS) 60–0269, last fully published at 64 FR 11076 (March 8, 1999), and updated at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), and 83 FR 54969 (November 1, 2018).

The Unverified Prisoner System (UPS) is a subsystem of PUPS. UPS users perform a manual search of fallout cases where the Enumeration and Verification System is unable to locate an SSN for a noncitizen who has been removed.

The systems of records involved in this computer matching program have routine uses permitting the disclosures needed to conduct this match.

[FR Doc. 2022–10609 Filed 5–17–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 11722]

Determination Pursuant to the Foreign Missions Act

Effective at 12:00 p.m. March 16, 2022, the Embassy of Afghanistan and Afghanistan's consular posts at Beverly Hills, CA and New York, NY formally ceased conducting diplomatic and consular activities in the United States. A protecting power or other agent charged with responsibility for the property of said missions has not been requested, nor approved by the Secretary of State.

In accordance with section 205 (c) of the Foreign Missions Act (22 U.S.C.

4305 (c)) and until further notice, the Department of State's Office of Foreign Missions has assumed sole responsibility for ensuring the protection and preservation of the property of the referenced missions, including but not limited to all real and tangible property, furnishings, archives, and financial assets of the Afghan Embassy or its consular posts in the United States.

In exercise of this custodial responsibility, and pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 30, 1994, I further determine that entry or access to the following locations and facilities is strictly prohibited unless prior authorization is granted by the Office of Foreign Missions:

- 2341 Wyoming Avenue NW, Washington, DC 20008
- 120 S Doheny Drive, Beverly Hills, CA 90211
- 34–03 255th Street, Little Neck, NY 20008

Clifton C. Seagroves,

Acting Director, Office of Foreign Missions, Department of State.

[FR Doc. 2022–10639 Filed 5–17–22; 8:45 am]

BILLING CODE 4711–07–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: 60-Day notice of submission of information collection approval and request for comments.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection.

DATES: Comments should be sent to the Public Information Collection Clearance Officer no later than July 18, 2022.

ADDRESSES: Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK–320, Knoxville, Tennessee 37902–1401; telephone (865) 632–6580 or by email at *pra@tva.gov.*

SUPPLEMENTARY INFORMATION:

Type of Request: New collection.

Title of Information Collection: LPC FIRST Financial Reporting.

Frequency of Use: Monthly and Annually.

Type of Affected Public: Business or Local Government.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 455.

Estimated Number of Annual Responses: 153.

Estimated Total Annual Burden Hours: 2693.

Estimated Average Burden Hours per Response: 14 hours (Annual Report); 0.3 hours (Monthly Report).

Need for and Use of Information: TVA, serving in its regulatory capacity, uses this financial and statistical information to monitor each distributor's current financial position and to forecast requirements for reasonable levels of resources for renewals, replacements, and contingencies. The data from this information collection is used by TVA organizations (Regulatory Assurance, Commercial Energy Solutions, Treasury and Risk, Regional Relations and Transmission and Power Supply) and the TVA Board of Directors to assist in making management decisions concerning electric power rates, financing the TVA power generating and transmission system, and other long-term plans. If this information collection is not conducted, TVA would be severely hampered in fulfilling its responsibilities to Congress under Section 11 of the TVA Act of 1933 to ''permit domestic and rural use [of electricity] at the lowest possible rates.'' TVA has deployed the new Financial Information & Regulatory System Tool (FIRST) to streamline data collection and reduce the burden on the public.

Rebecca L. Coffey,

Agency Records Officer.

[FR Doc. 2022–10611 Filed 5–17–22; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting of the National Parks Overflights Advisory Group

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG). This notification provides the date, location, and agenda for the meeting.

DATES: The NPOAG will meet on June 22–23, 2022. The meeting will take place in the Windsor Conference Room located in the lobby of the Fort Collins Marriott, 350 East Horsetooth Road, Fort Collins, CO 80525. The meeting will be held from 1:00 p.m. to 4:30 p.m. on June 22 and from 8:30 a.m. to 11:30 a.m. p.m. on June 23, 2022. This NPOAG meeting will be open to the public. Because seating is limited, members of the public wishing to attend will need to contact the person listed under **FOR FURTHER INFORMATION CONTACT** by June 10, 2022 to ensure sufficient meeting space is available to accommodate all attendees.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 777 South Aviation Boulevard, Suite 150, El Segundo, CA 92045, telephone: (424) 405–7017, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (NPATMA), enacted on April 5, 2000, as Public Law 106–181, required the establishment of the NPOAG within one year after its enactment. The Act requires that the NPOAG be a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairperson of the advisory group.

The duties of the NPOAG include providing advice, information, and recommendations to the FAA Administrator and the NPS Director on; implementation of Public Law 106–181; quiet aircraft technology; other measures that might accommodate interests to visitors of national parks; and at the request of the Administrator and the Director, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

Agenda for the June 22–23, 2022 NPOAG Meeting

The agenda for the meeting will include, but is not limited to, an update on ongoing park specific air tour management plans or voluntary agreements, status of agency implementation of court approved plan/schedule, update on environmental review process and special purpose law consultations, and public comment review process.

Attendance at the Meeting and Submission of Written Comments

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend please contact the person listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may be made to accommodate all attendees. Written comments regarding the meeting will be accepted directly from attendees or may be sent to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Record of the Meeting

If you cannot attend the NPOAG meeting, a summary record of the meeting will be made available under the NPOAG section of the FAA ATMP website at: *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/parks_overflights_group/minutes.cfm* or through the Special Programs Staff, Western-Pacific Region, 777 South Aviation Boulevard, Suite 150, El Segundo, CA 90245, telephone: (424) 405–7017.

Issued in El Segundo, CA, on May 13, 2022.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2022–10653 Filed 5–17–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Winter 2022/2023 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 19, 2022, for Winter 2022/2023 flight schedules at Chicago O'Hare International Airport (ORD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO).

DATES: Schedules should be submitted by May 19, 2022.

ADDRESSES: Schedules may be submitted to the Slot Administration Office by email to: *7-AWA-slotadmin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Al Meilus, Manager, Slot Administration, AJR–G, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–2822; email *Al.Meilus@faa.gov.*

SUPPLEMENTARY INFORMATION: This document provides routine notice to carriers serving capacity-constrained airports in the United States, including Chicago O'Hare International Airport (ORD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO). In particular, this notice announces the deadline for carriers to submit schedules for the Winter 2022/2023 scheduling season. The FAA deadline coincides with the schedule submission deadline established in the International Air Transport Association (IATA) Calendar of Coordination Activities.

General Information for All Airports

The FAA has designated EWR, LAX, ORD, and SFO as IATA Level 2 airports [1] subject to a schedule review process premised upon voluntary cooperation. The FAA has designated JFK as an IATA Level 3 airport consistent with the Worldwide Slot Guidelines (WSG), now generally known as the Worldwide Airport Slot Guidelines (WASG).[2] The FAA currently limits scheduled operations at JFK by order that expires on October 29, 2022.[3] The Winter 2022/2023 scheduling season is from October 30, 2022, through March 25, 2023, in recognition of the IATA Northern Winter scheduling period.

Notwithstanding that carriers may presently face uncertainty about their international operations in light of coronavirus disease 2019 (COVID–19), carriers should continue preparations for schedule facilitation at Level 2 airports and an extension of slot controls at JFK during the Winter 2022/2023 scheduling season and submit their schedule under the assumption that no relief will be granted at Level 2 and Level 3 airports during the Winter 2022/2023 scheduling season.[4] The FAA and the Office of the Secretary will continue to monitor industry developments closely and will announce any possible COVID–19-related relief, if it is deemed necessary, in a separate notice. Any potential relief for the Winter 2022/2023 scheduling season and any potential action to alter the established rules and policies for slot management and schedule facilitation in the United States are not within the scope of this notice.

The FAA is concerned primarily about scheduled and other regularly conducted commercial operations during designated hours, but carriers may submit schedule plans for the entire day. The designated hours for the Winter 2022/2023 scheduling season are: At EWR and JFK from 0600 to 2300 Eastern Time (1100 to 0400 UTC), at LAX and SFO from 0600 to 2300 Pacific Time (1400 to 0700 UTC), and at ORD from 0600 to 2100 Central Time (1200 to 0300 UTC). These hours are unchanged from previous scheduling seasons. The FAA understands there may be differences in schedule times due to U.S. daylight saving time dates and will accommodate these differences to the extent possible.

Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements for communications at Level 2 and Level 3 airports in the IATA Standard Schedules Information Manual (SSIM) Chapter 6 may be used. The WSG provides additional information on schedule submissions at Level 2 and Level 3 airports. Some carriers at JFK manage and track slots through FAA-

[1] These designations remain effective until the FAA announces a change in the **Federal Register**.

[2] The FAA generally applies the WSG edition 9 to the extent there is no conflict with U.S. law or regulation.

[3] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008), as most recently extended 85 FR 58258 (Sep. 18, 2020). The slot coordination parameters for JFK are set forth in this Order.

[4] For additional information on COVID–19 impacts at designated IATA Level 2 and 3 airports in the United States and actions taken by the FAA to preserve stability through the Winter 2021/2022 scheduling season, *see* FAA Notice of Limited, Conditional Extension of COVID–19 Related Relief for International Operations only for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021).

assigned Slot ID numbers corresponding to an arrival or departure slot in a particular half-hour on a particular day of week and date. The FAA has a similar voluntary process for tracking schedules at EWR with Reference IDs, and certain carriers are managing their schedules accordingly. These are primarily U.S. and Canadian carriers that have the highest frequencies and considerable schedule changes throughout the season and can benefit from a simplified exchange of information not dependent on full flight details. Carriers are encouraged to submit schedule requests at those airports using Slot or Reference IDs.

As stated in the WSG, schedule facilitation at a Level 2 airport is based on the following: (1) Schedule adjustments are mutually agreed upon between the carriers and the facilitator; (2) the intent is to avoid exceeding the airport's coordination parameters; (3) the concepts of historic precedence and series of slots do not apply at Level 2 airports; although WSG recommends giving priority to approved services that plan to operate unchanged from the previous equivalent season at Level 2 airports, and (4) the facilitator should adjust the smallest number of flights by the least amount of time necessary to avoid exceeding the airport's coordination parameters. Consistent with the WSG, the success of Level 2 in the United States depends on the voluntary cooperation of carriers.

The FAA considers several factors and priorities as it reviews schedule and slot requests at Level 2 and Level 3 airports, which are consistent with the WSG, including—historic slots or services from the previous equivalent season over new demand for the same timings, services that are unchanged over services that plan to change time or other capacity relevant parameters, introduction of year-round services, effective period of operation, regularly planned operations over *ad hoc* operations, and other operational factors that may limit a carrier's timing flexibility. In addition to applying these priorities from the WSG, the U.S. Government has adopted a number of measures and procedures to promote competition and new entry at U.S. slot-controlled and schedule-facilitated airports.

Consistent with the limited, conditional extension of COVID–19 related relief for the Winter 2021/2022 scheduling season [5], slots or schedules operated as approved on a non-historic or an *ad hoc* basis in Winter 2021/2022 will be given priority over new requests for the same timings in Winter 2022/2023, subject to capacity availability and consistent with established rules and policies in effect in the United States. This priority applies to slot or schedule requests for Winter 2022/2023, which are comparable in timing, frequency, and duration to the *ad hoc* approvals made by the FAA for Winter 2021/2022. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which met the conditions of the waiver during Winter 2021/2022 and which seek to resume operating in Winter 2022/2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA. Foreign air carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Slot management in the United States differs in some respect from procedures in other countries. In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in addition to, the FAA schedule review based on runway capacity.

Generally, the FAA uses average hourly runway capacity throughput for airports and performance metrics in conducting its schedule review at Level 2 airports and determining the scheduling limits at Level 3 airports included in FAA rules or orders.[6] The FAA also considers other factors that can affect operations, such as capacity changes due to runway, taxiway, or other airport construction, air traffic control procedural changes, airport surface operations, and historical or projected flight delays and congestion.

Finally, the FAA notes that the schedule information submitted by carriers to the FAA may be subject to disclosure under the Freedom of Information Act (FOIA). The WSG also provides for release of information at certain stages of slot coordination and schedule facilitation. In general, once it acts on a schedule submission or slot request, the FAA may release information on slot allocation or similar slot transactions or schedule information reviewed as part of the schedule facilitation process. The FAA does not expect that practice to change and most slot and schedule information would not be exempt from release under FOIA. The FAA recognizes that some carriers may submit information on schedule plans that is both customarily and actually treated as private. Carriers that submit such confidential schedule information should clearly mark the information, or any relevant portions thereof, as proprietary information (''PROPIN''). The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

EWR General Information

Consistent with the WSG, carriers are asked for their voluntary cooperation to adjust schedules to meet the targeted scheduling limits in order to minimize potential congestion and delay. For the Winter 2022/2023 season, the voluntary, targeted hourly scheduling limit remains at 79 operations and 43 operations per half-hour.[7] To help with a balance between arrivals and departures, the targeted maximum number of scheduled arrivals or departures, respectively, is 43 in an hour and 24 in a half-hour. These targets are expected to allow some higher levels of operations in certain periods (not to exceed the hourly limits) and some recovery from lower demand in adjacent periods. Consistent with general established practice at EWR, the FAA will accept flights above the limits if the flights were operated as approved, or treated as operated, by the same carrier on a regular basis in the previous corresponding season (*i.e.,* Winter 2021/2022).

Notwithstanding the targeted limits at EWR previously described, OST and the FAA have decided to reintroduce and reassign 16 peak afternoon and evening runway timings, which were historically approved for operation by Southwest Airlines, Inc. at EWR prior to the carrier's exit from the airport in

[5] *See* FAA Notice of Limited, Conditional Extension of COVID–19 Related Relief for International Operations only for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021).

[6] The FAA typically determines an airport's average adjusted runway capacity or typical throughput for Level 2 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour, commonly known as ''called'' rates. The FAA also reviews the actual number of arrivals and departures that operated in the same hour. Generally, the FAA uses the higher of the two numbers, called or actual, for identifying trends and schedule review purposes. Some dates are excluded from analysis, such as during periods when extended airport closures or construction could affect capacity.

[7] 83 FR 21335 (May 9, 2018).

November 2019. [8] This proposed reassignment of schedule timings at EWR is an independent process outside of the FAA's routine schedule review process. Once the reassignment proceeding is complete, the FAA will seek to work in coordination with the awarded carrier to adjust schedules within the peak afternoon and evening period, including minor changes between adjacent half hours, in the interest of optimizing efficiency and accommodating the carrier's schedule plans, consistent with the usual Level 2 process.

Issued in Washington, DC, on May 13, 2022.

Virginia T. Boyle,

Vice President, System Operations Services.

[FR Doc. 2022–10740 Filed 5–16–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0579]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Suspected Unapproved Parts Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected on the FAA Form 8120–11 is reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected unapproved parts to the FAA for review. The report information is collected and correlated by the FAA Hotline Program Office, and used to determine if an unapproved part investigation is warranted. When unapproved parts are confirmed that are likely to exist on other products or aircraft of the same or similar design or are being used in other facilities, the information is used as a basis for an aviation industry alert or notification.

[8] Reassignment of Schedules at Newark-Liberty International Airport, 86 FR 52285 (Sept. 20, 2021). See also Reassignment of schedules at Newark-Liberty International Airport, Docket DOT–OST–2021–0103 (Feb. 25, 2022).

DATES: Written comments should be submitted by July 18, 2022.

ADDRESSES: Please send written comments:

By electronic docket: www.regulations.gov (enter docket number into search field).

By mail: Robert Franklin, Production and Airworthiness Systems, AIR–632, Aircraft Certification Service, Federal Aviation Administration, 950 L'Enfant Plaza, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert Franklin by email at: *Robert.franklin@faa.gov;* phone: 202–267–1603.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0552.

Title: Suspected Unapproved Parts Report.

Form Numbers: FAA Form 8120–11.

Type of Review: Renewal of an information collection.

Background: The information collected on the FAA Form 8120–11, Suspected Unapproved Parts Report, is reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected unapproved parts (SUP) to the FAA for review. The report information is collected and correlated by the FAA Hotline Program Office, and used to determine if an unapproved part investigation is warranted. When unapproved parts are confirmed that are likely to exist on other products or aircraft of the same or similar design or are being used in other facilities, the information is used as a basis for an aviation industry alert or notification. Alerts are used to inform industry of situations essential to the prevention of accidents, if the information had not been collected. The consequence to the aviation community would be the inability to determine whether or not unapproved parts are being offered for sale or use for installation on type-certificated products.

Procedures and processes relating to the SUP program and associated reports are found in FAA Order 8120.16A, Suspected Unapproved Parts Program, and Advisory Circular 21–29, Detecting and Reporting Suspected Unapproved Parts. When unapproved parts are identified, the FAA notifies the public by published Field Notifications, disseminated using Unapproved Parts Notifications, Aviation Maintenance Alerts, Airworthiness Directives, entry into an issue of the Service Difficulty Reporting Summary, a Special Airworthiness Information Bulletin, a display on an internet site, or direct mailing. Reporting of information is strictly voluntary. The information is requested from any individual or facility suspecting an unapproved part. Any burden is minimized by requesting only necessary information to warrant an investigation.

Respondents: Anyone may fill out and send FAA Form 8120–11 to the FAA.

Frequency: Whenever anyone discovers or suspects they have received an unapproved part.

Estimated Average Burden per Response: About 30 minutes to read and disposition each form.

Estimated Total Annual Burden: The FAA collects approximately 200 forms from the public per year.

Issued in Des Moines, Washington, on May 12, 2022.

Michael A. Millage,

Manager, Production & Airworthiness Systems, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–10619 Filed 5–17–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0154]

Agency Information Collection Activities; Approval of a Renewal of a Currently-Approved Information Collection: Annual Report of Class I and Class II For-Hire Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the previously approved ICR

titled, ''*Annual Report of Class I and Class II For-Hire Motor Carriers,*'' OMB Control No. 2126–0032. This ICR is necessary to comply with FMCSA's financial and operating statistics requirements at chapter III of title 49 CFR part 369 titled, ''*Reports of Motor Carriers.*''

DATES: Comments on this notice must be received on or before June 17, 2022.

ADDRESSES: Written comments and recommendations for the information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–385–2367; email *jeff.secrist@dot.gov* .

SUPPLEMENTARY INFORMATION:

Title: Annual Report of Class I and Class II For-Hire Motor Carriers.

OMB Control Number: 2126–0032.

Type of Request: Renewal of a currently-approved information collection.

Respondents: Class I and Class II For-Hire Motor Carriers of Property and Class I For-Hire Motor Carriers of Passengers.

Estimated Number of Respondents: 102 total (34 per year).

Estimated Time per Response: 9 hours for Form M and 0.3 hours for Form MP–1.

Expiration Date: May 31, 2022.

Frequency of Response: Annually.

Estimated Total Annual Burden: 306 hours [306 hours (Form M) + 0 hours (Form MP–1)].

Estimated annual respondents for Form M decreased from 43 in the previously approved Information Collection Requirement (ICR) to 34 in the current ICR. Estimated annual burden hours for Form M decreased by 78 hours [306 proposed hours − 384 currently approved hours = − 78 hours]. Estimated annual respondents for Form MP–1 stayed the same. The previously approved ICR had 0 annual hours. The current ICR has 0 annual hours. This estimate is based off the number of Form M and Form MP–1 submissions received by the Agency between 2018 and 2020, which results in these estimates of annual respondents/responses for the upcoming information collection period.

Labor costs to industry have decreased by $2,276 annually [$14,494 in proposed costs − $16,770 currently approved costs = −$2,276]. This is due to the decreased estimates of annual respondents/responses. Other annual costs to respondents (*i.e.,* associated with mailing completed forms to FMCSA) have decreased by $9 [($34 in proposed mailing costs for Form M + $0 in proposed mailing costs for Form MP–1)—($43 in previously approved mailing costs for Form M + $0 in previously approved mailing costs for Form MP–1) = $ − 9]. This change is also due to the decreased estimates of annual respondents/responses.

For the Federal Government, annual costs have increased by $6 [$79 in proposed costs − $73 in previously approved costs = $6]. This increase is due to a revision in the federal government employee load rate, which was revised to be consistent with other FMCSA ICRs.

Background

Section 14123 of title 49 of the United States Code (U.S.C.) requires certain for-hire motor carriers of property, passengers, and household goods to file annual financial reports. The annual reporting program was implemented on December 24, 1938 (3 FR 3158), and it was subsequently transferred from the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation's (DOT) Bureau of Transportation Statistics (BTS) on January 1, 1996. The Secretary of Transportation delegated to BTS the responsibility for the program on December 17, 1996 (61 FR 68162). Responsibility for collection of the reports was transferred from BTS to FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA collects carriers' annual reports and furnishes copies of the reports when requested under the Freedom of Information Act (FOIA). Annual financial reports are filed on Form M (Class I and II for-hire property carriers, including household goods carriers) and Form MP–1 (Class I for-hire passenger carriers). For-hire motor carriers (including interstate and intrastate) subject to the Federal Motor Carrier Safety Regulations are classified on the basis of their gross carrier operating revenues.[1]

The data and information collected is publicly available through FOIA requests. FMCSA has created electronic forms that may be prepared, signed electronically, and submitted to FMCSA via *https://ask.fmcsa.dot.gov/app/ask/.* FMCSA revised Form M to ensure that it solicits only that information required by statute, and also added an option to allow filers to upload their own document in lieu of filling out either Form M or MP–1 (as applicable), so long as the document includes all of the information listed on the form.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–10661 Filed 5–17–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0009]

Agency Information Collection Activities; Notice and Request for Comment; National Survey of the Use of Booster Seats

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

ACTION: Notice and request for comments on a renewal of an existing clearance.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This document describes a collection of

[1] For purposes of the Financial and Operating Statistics (F&OS) program, carriers are classified into the following three groups: (1) Class I carriers are those having annual carrier operating revenues (including interstate and intrastate) of $10 million or more after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2; and (2) Class II carriers are those having annual carrier operating revenues (including interstate and intrastate) of at least $3 million, but less than $10 million after applying the revenue deflator formula as set forth in 49 CFR 369.2.

information for which NHTSA intends to seek OMB approval on the National Survey of the Use of Booster Seats (NSUBS). A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 16, 2022. NHTSA received 3 comments. As explained in this document, none of the comments necessitate NHTSA making any revisions to the information collection or burden estimates.

DATES: Comments must be submitted on or before June 17, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Lacey L. Boyle, Office of Traffic Records and Analysis, Mathematical Analysis Division (NSA–210), 202–366–7468, National Center for Statistics and Analysis, W55–207, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number (2127–0644).

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information was published on February 16, 2022 (87 FR 8929).

Title: National Survey of the Use of Booster Seats.

OMB Control Number: 2127–0644.

Form Number(s): NHTSA Form 1010.

Type of Request: Extension of a currently approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: The National Survey of the Use of Booster Seats (NSUBS) is a voluntary collection of restraint use information for children under 13. NSUBS is a biennial collection. Data collectors observe restraint use for all passenger vehicle occupants included in the survey and for those vehicles that voluntarily participate, the data collectors conduct a brief interview with the vehicle driver or other knowledgably adult to determine the age, height, weight, race, and ethnicity of the child occupants and age of driver. Data collectors collect the information at fast food restaurants, gas stations, day care centers, and recreation centers where vehicles are most likely to have child occupants. The survey estimates restraint use for all children under 13. The collection includes race and ethnicity breakouts of restraint use among all occupants in a vehicle as well as age, height, and weight of children.

Description of the Need for the Information and Proposed Use of the Information: The NSUBS is conducted to respond to Section 14(i) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The Act directs the Department of Transportation to reduce deaths and injuries (among children in the 4- to 8-year old age group that are caused by failure to use a booster seat) by twenty-five percent. Conducting the National Survey of the Use of Booster Seats provides the Department with invaluable information on use and non-use of booster seats, helping the Department to improve its outreach programs to ensure that children are protected to the greatest extent possible when they ride in motor vehicles. The OMB approval for this survey is scheduled to expire on June 30, 2022. NHTSA seeks an extension to this approval to obtain this important survey data, save more children, and help to comply with the TREAD Act requirement.

60-day Notice: NHTSA published a 60-day notice on February 16, 2022 requesting comments on NHTSA's intention to request approval from the Office of Management and Budget (OMB) for an extension of the currently approved NSUBS information collection (87 FR 8929). NHTSA received 3 comments on the 60-day notice. Two of the commentors expressed support to continue the NSUBS, while one commentor was against the continuation of the NSUBS. None of the comments necessitate a revision of the scope of the information collection or the estimates of the annual cost or burden hours.

One individual, Jean Publee, commented against the continuation of the NSUBS. Publee states that NHTSA has collected the NSUBS for years and believes that the data collection should not go on without an end date. Publee states that the NSUBS is a waste of tax dollars. While NHTSA understands Publee's comments, NHTSA believes that the continuation of this data collection is necessary to support NHTSA's mission. The NSUBS is the only probability-based nationwide child restraint use survey in the United States that observes restraint use. Without this survey, NHTSA cannot direct outreach programs where they are most needed.

NHTSA received two comments supporting the continuation of the NSUBS. Safe Kids Worldwide state that it supports the continuation of the NSUBS and uses the information collected from the NSUBS to develop and advocate policy around child safety in cars. SafetyBeltSafe U.S.A. (SBS USA) also shared its support for the continuation of the NSUBS, but stated that in addition to what NSUBS already collects they would like more detailed data reporting. SBS USA mentions that 16 States and DC mandate rear-facing car seats until age 2. SBS USA wants to know if these laws are working in States with these requirements vs. States without these requirements. NHTSA does not collect data in every State and applies sampling weights to produce nationally representative estimates; however NHTSA will consider this suggestion and determine if the current sample design will allow reporting of usage rate based on child restraint laws. SBS USA is concerned about booster seat usages vs. booster seat need especially for children 8- to 12-years old. SBS USA suggests having parents conduct the 5-Step Test on children using seatbelts and record the results. NHTSA appreciates the suggestion and will consider it for the future. At this time, adding the 5-Step Test is out of scope of the NSUBS. NHTSA's purpose in conducting the NSUBS is to assess the extent to which children are prematurely transitioned to restraint types that are inappropriate for their age, height, and weight. The data collectors have a limited amount of time to visually inspect restraint usage and interview drivers, adding the 5-Step Test is time prohibitive. NHTSA does record the age of interviewed children and will consider breaking out data based on the age range of 8–9 and 10–12 as it might give more insight into how older and younger kids in the 8–12 age range are transitioned to different restraint types.

Affected Public: Motorists in passenger vehicles with children under 13 willing to participate at gas stations, fast food restaurants, day care centers, and recreation centers frequented by children during the time in which the survey is conducted.

Estimated Number of Respondents: Based on the average number of respondents from the last three survey years (2017, 2019, 2021), we expect to have approximately 5,300 adult motorists in passenger vehicles with children under 13 at gas stations, fast food restaurants, day care centers, and recreation as respondents.

Frequency: Biennial.

Estimated Total Annual Burden Hours: NHTSA estimates that the data collection will, on average, take approximately 4.25 minutes of each respondent's time. Respondents are adult motorists supplying information about children in their vehicle. Multiplying the 4.25 minutes of burden per respondent by the estimated 5,300 respondents yields 376 (5,300 × 4.25/60) total burden hours for all respondents collectively. Since NSUBS data are collected biennially, dividing the 376 total burden hours by two yields an annual burden of 188 hours.

To represent the value of the respondents' time, NHTSA uses the average hourly wage for the United States, which is estimated to be $27.07.[1] Using this estimate, NHTSA estimates the total opportunity costs to respondents to be $10,178.32 (376 × $27.07) or $5,089.16 annually.

Estimated Total Annual Burden Cost: $0.

NHTSA estimates that there are no costs to respondents other than opportunity costs associated with the burden hours.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Chou-Lin Chen,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2022–10629 Filed 5–17–22; 8:45 am]

BILLING CODE 4910–59–P

[1] U.S. Dept. of Labor, Bureau of Labor Statistics, June 2021, from *https://www.bls.gov/oes/current/oes_nat.htm#00-0000* for May 2020.

DEPARTMENT OF VETERANS AFFAIRS

Solicitations of Nominations for Appointment to the VA National Academic Affiliations Council

AGENCY: Department of Veterans Affairs.

ACTION: Notice of solicitation for nominations.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the VA National Academic Affiliations Council (NAAC) (hereinafter in this section referred to as ''the NAAC'').

DATES: Nominations for membership on the NAAC must be received no later than 5:00 p.m. EST on June 1, 2022.

ADDRESSES: All nominations should be emailed to *larissa.emory@va.gov.* Please write Nomination for NAAC Membership in the subject line.

FOR FURTHER INFORMATION CONTACT: Larissa Emory, PMP, CBP, MS, Designated Federal Officer (DFO), OAA, Veterans Health Administration (VHA) at *larissa.emory@va.gov.* A copy of the current charter and list of current members can also be obtained by emailing *larissa.emory@va.gov* or (573) 797–9137.

SUPPLEMENTARY INFORMATION: The NAAC was established to provide advice and make recommendations to the Secretary of VA on matters affecting partnerships between VA and its academic affiliates. In providing advice to the Secretary and making recommendations on matters affecting partnerships between VA and its academic affiliates, the NAAC carries out the duties set forth and to operate under the provisions of the Federal Advisory Committee Act, as amended 5 U.S.C. app. 2.

Membership Criteria and Qualifications: VA is seeking nominations for NAAC membership. The NAAC is comprised of not more than 14 regular members, plus not more than 8 ex-officio Federal members. Several members may be regular Government employees, but most of the NAAC's membership shall consist of non-Federal employees, appointed by the Secretary from the general public, serving as Special Government Employees.

The expertise required of the NAAC's membership includes, but is not limited to:

(1) Individuals who are knowledgeable experts with special competence to evaluate and improve the partnership between VA and its academic affiliates.

(2) Individuals representing academic leaders of:

a. Health professions education institutions.

b. Health care industry leaders.

c. Academic and health care leaders with experience in establishing and sustaining academic affiliations and accredited health professions residency and training programs.

(3) Individuals representing National Accrediting or Professional Organizations to include but not limited to Association of American Medical Colleges (AAMC), American Association of Colleges of Pharmacy (AACP), Accreditation Council for Graduate Medical Education (ACGME), American Psychological Association (APA), Physician Assistant Education Association (PAEA), and National Hispanic Medical Association (NHMA).

Membership Requirements: The NAAC meets up to four times annually, typically once per quarter each fiscal year. Individuals selected for appointment to the NAAC shall be invited to serve an initial three-year term. After the initial term, the Secretary may reappoint members for an additional term. NAAC members will receive per diem and reimbursement for eligible travel expenses incurred.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. Nominations should include any relevant information to ensure diverse Committee membership.

Requirements for Nomination Submission

Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating willingness to serve as a member of the NAAC.

(2) The nominee's contact information, including name, mailing address, telephone number(s), and email address.

(3) The nominee's resume or curriculum vitae that is no more than three pages in length.

(4) A statement from the nominee attesting that he/she is not a Federal registered lobbyist.

The Department makes every effort to ensure that the membership of VA Federal Advisory Committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to the NAAC shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership.

Dated: May 13, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–10669 Filed 5–17–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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No. 96 May 18, 2022

Part II

Department of Homeland Security

8 CFR Part 214, 274a

Department of Labor

Employment and Training Administration and Wage and Hour Division

20 CFR Part 655

Exercise of Time-Limited Authority To Increase the Numerical Limitation for Second Half of FY 2022 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2719–22]

RIN 1615–AC79

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA–2022–0004]

RIN 1205–AC10

Exercise of Time-Limited Authority To Increase the Numerical Limitation for Second Half of FY 2022 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS), and Employment and Training Administration and Wage and Hour Division, U.S. Department of Labor (DOL).

ACTION: Temporary rule.

SUMMARY: The Secretary of Homeland Security, in consultation with the Secretary of Labor, is exercising his time-limited Fiscal Year (FY) 2022 authority and again increasing the total number of noncitizens who may receive an H–2B nonimmigrant visa by authorizing the issuance of no more than 35,000 additional visas during the second half of FY 2022 for positions with start dates on or after April 1, 2022 through September 30, 2022, to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form. This number is in addition to the 20,000 H–2B visas authorized by the Secretary in consultation with the Secretary of Labor in January of 2022 for petitions with start dates on or before March 31, 2022. In addition to making the additional 35,000 visas available under the FY 2022 time-limited authority, DHS is exercising its general H–2B regulatory authority to again provide temporary portability flexibility by allowing H–2B workers who are already in the United States to begin work immediately after an H–2B petition (supported by a valid temporary labor certification) is received by USCIS, and before it is approved.

DATES:

Effective dates: The amendments to title 8 of the Code of Federal Regulations in this rule are effective from May 18, 2022 through May 18, 2025. The amendments to title 20 of the Code of Federal Regulations in this rule are effective from May 18, 2022 through September 30, 2022, except for 20 CFR 655.66 which is effective from May 18, 2022 through September 30, 2025.

Petition dates: DHS will stop accepting petitions received after September 15, 2022. DHS will not approve any H–2B petition under the provisions related to the supplemental numerical allocation after September 30, 2022. The provisions related to portability are only available to petitioners and H–2B nonimmigrant workers initiating employment through the end of January 24, 2023.

Comment dates: The Office of Foreign Labor Certification within the U.S. Department of Labor will be accepting comments in connection with the new information collection Form ETA–9142B–CAA–6 associated with this rule until July 18, 2022.

ADDRESSES: You may submit written comments on the new information collection Form ETA–9142B–CAA–6, identified by Regulatory Information Number (RIN) 1205–AC09 electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Instructions: Include the agency's name and the RIN 1205–AC09 in your submission. All comments received will become a matter of public record and will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable information or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: Regarding 8 CFR parts 214 and 274a: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number).

Regarding 20 CFR part 655 and Form ETA–9142B–CAA–6: Brian D. Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Ave NW, Room N–5311, Washington, DC 20210, telephone (202) 693–8200 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

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I. Executive Summary

FY 2022 H–2B Supplemental Cap

With this temporary final rule (TFR), the Secretary of Homeland Security, following consultation with the Secretary of Labor, is authorizing the immediate release of an additional 35,000 H–2B visas for the second half of FY 2022 positions with start dates on or after April 1, 2022 through September 30, 2022, subject to certain conditions. The 35,000 visas are divided into two allocations, as follows:

- 23,500 visas limited to returning workers, regardless of country of nationality, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2019, 2020, or 2021; and
- 11,500 visas reserved for nationals of El Salvador, Guatemala, and Honduras (Northern Central American countries) and Haiti as attested by the petitioner (regardless of whether such nationals are returning workers).

To qualify for the FY 2022 supplemental cap provided by this

temporary final rule, eligible petitioners must:

- Meet all existing H–2B eligibility requirements, including obtaining an approved temporary labor certification (TLC) from DOL before filing the Form I–129, Petition for Nonimmigrant Worker, with USCIS;
- Properly file the Form I–129, Petition for Nonimmigrant Worker, with USCIS on or before September 15, 2022, requesting an employment start date on or after April 1, 2022 through September 30, 2022;
- Submit an attestation affirming, under penalty of perjury, that the employer is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on the petition, and that they are seeking to employ returning workers only, unless the H–2B worker is a Salvadoran, Guatemalan, Honduran, or Haitian national and counted towards the 11,500 cap exempt from the returning worker requirement; and
- Agree to comply with all applicable labor and employment laws, including health and safety laws pertaining to COVID–19, as well as any rights to time off or paid time off to obtain COVID–19 vaccinations,[1] or to reimbursement for travel to and from the nearest available vaccination site, and notify the workers in a language understood by the worker as necessary or reasonable, of equal access of nonimmigrants to COVID–19 vaccines and vaccination distribution sites.

Employers filing an H–2B petition 30 or more days after the certified start date on the TLC, must attest to engaging in the following additional steps to recruit U.S. workers:

- No later than 1 business day after filing the petition, place a new job order with the relevant State Workforce Agency (SWA) for at least 15 calendar days;
- Contact the nearest American Job Center serving the geographic area where work will commence and request staff assistance in recruiting qualified U.S. workers;
- Contact the employer's former U.S. workers, including those the employer furloughed or laid off beginning on January 1, 2020, and until the date the H–2B petition is filed, disclose the terms of the job order and solicit their return to the job;
- Provide written notification of the job opportunity to the bargaining representative for the employer's employees in the occupation and area of employment, or post notice of the job opportunity at the anticipated worksite if there is no bargaining representative;
- Hire any qualified U.S. worker who applies or is referred for the job opportunity until the later of either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date of the SWA job order posting; and
- Where the occupation is traditionally or customarily unionized, provide written notification of the job opportunity to the nearest American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) office covering the area of intended employment, by providing a copy of the job order and requesting assistance in recruiting qualified U.S. workers for the job opportunity.

Petitioners filing H–2B petitions under this FY 2022 supplemental cap must retain documentation of compliance with the attestation requirements for 3 years from the date the TLC was approved, and must provide the documents and records upon the request of DHS or DOL, as well as fully cooperate with any compliance reviews such as audits.

Through audits and investigations, both Departments have received evidence of employer non-compliance with the terms and conditions of the H–2B program, as well as violations of other labor and employment laws. USCIS Fraud Detection and National Security (FDNS) Headquarters found that instances of non-compliance encountered by field USCIS FDNS personnel could be parsed into four areas: (1) Failure to pay the promised wage; (2) failure to demonstrate irreparable harm; (3) failure to employ returning workers; and (4) failure to work at the listed location.

Such non-compliance can harm U.S. workers by undermining wages and working conditions. It also directly harms H–2B workers. Further, H–2B workers depend on ongoing employment with the petitioning employer to maintain status in the United States. This dependence creates a power imbalance between the employer and H–2B worker, making the H–2B worker particularly vulnerable to violations. Recognizing the substantial impact that non-compliance can have on both U.S. workers and H–2B workers, DHS and DOL intend to conduct a significant number of audits focusing on irreparable harm and other worker protection provisions. DHS will also subject employers that have committed labor law violations in the H–2B program to additional scrutiny in the supplemental cap petition process. This additional scrutiny is aimed at ensuring compliance with H–2B program requirements and obligations.

Specifically, falsifying information in H–2B program attestation(s) can result not only in penalties relating to perjury, but can also result in, among other things, a finding of fraud or willful misrepresentation; denial or revocation of the H–2B petition requesting supplemental workers; and debarment by DOL and DHS from the H–2B program and any other foreign labor programs administered by DOL. Falsifying information also may subject a petitioner/employer to other criminal penalties.

DHS will not approve H–2B petitions filed in connection with the FY 2022 supplemental cap authority on or after October 1, 2022.

H–2B Portability

In addition to exercising its time-limited authority to make additional FY 2022 H–2B visas available, DHS is again providing additional flexibilities to H–2B petitioners under its general programmatic authority by allowing nonimmigrant workers in the United States [2] in valid H–2B status and who are beneficiaries of non-frivolous H–2B petitions received on or after July 28, 2022, or who are the beneficiaries of non-frivolous H–2B petitions that are pending as of July 28, 2022, to begin work with a new employer after an H–2B petition (supported by a valid TLC) is filed and before the petition is approved, generally for a period of up to 60 days. However, such employment authorization would end 15 days after USCIS denies the H–2B petition or such petition is withdrawn. This H–2B portability ends 180 days after the provision's effective date of July 28, 2022, in other words, after January 24, 2023.

II. Background

A. Legal Framework

The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot

[1] The term ''COVID–19 vaccinations'' also includes COVID–19 booster shots.

[2] The term ''United States'' includes the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. INA section 101(a)(38), 8 U.S.C. 1101(a)(38).

be found in this country.'' INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition the Department of Homeland Security (DHS) for classification of prospective temporary workers as H–2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). Generally, DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa. In addition, the INA requires that ''[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],[3] after consultation with appropriate agencies of the Government.'' INA section 214(c)(1), 8 U.S.C. 1184(c)(1). The INA generally charges the Secretary of Homeland Security with the administration and enforcement of the immigration laws, and provides that the Secretary ''shall establish such regulations . . . and perform such other acts as he deems necessary for carrying out his authority'' under the INA. *See* INA section 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3); *see also* 6 U.S.C. 202(4) (charging the Secretary with ''[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States''). With respect to nonimmigrants in particular, the INA provides that ''[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary] may by regulations prescribe.'' INA section 214(a)(1), 8 U.S.C. 1184(a)(1); *see also* INA section 274A(a)(1) and (h)(3), 8 U.S.C. 1324a(a)(1) and (h)(3) (prohibiting employment of noncitizens [4] not authorized for employment). The Secretary may designate officers or employees to take and consider evidence concerning any matter which is material or relevant to the enforcement of the INA. INA sections 287(a)(1), (b), 8 U.S.C. 1357(a)(1), (b) and INA section 235(d)(3), 8 U.S.C. 1225(d)(3).

Finally, under section 101 of HSA, 6 U.S.C. 111(b)(1)(F), a primary mission of DHS is to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.''

DHS regulations provide that an H–2B petition for temporary employment in the United States must be accompanied by an approved TLC from the U.S. Department of Labor (DOL), issued pursuant to regulations established at 20 CFR part 655, or from the Guam Department of Labor if the workers will be employed on Guam. 8 CFR 214.2(h)(6)(iii)(A) and (C) through (E), (h)(6)(iv)(A)*; see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). The TLC serves as DHS's consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages and working conditions of similarly-employed U.S. workers. *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D).

In order to determine whether to issue a TLC, the Departments have established regulatory procedures under which DOL certifies whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary nonagricultural worker, and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. The regulations establish the process by which employers obtain a TLC and rights and obligations of workers and employers.

Once the petition is approved, under the INA and current DHS regulations, H–2B workers do not have employment authorization outside of the validity period listed on the approved petition unless otherwise authorized, and the workers are limited to employment with the H–2B petitioner. *See* 8 U.S.C. 1184(c)(1), 8 CFR 274a.12(b)(9). An employer or U.S. agent generally may submit a new H–2B petition, with a new, approved TLC, to USCIS to request an extension of H–2B nonimmigrant status for the validity of the TLC or for a period of up to 1 year. 8 CFR 214.2(h)(15)(ii)(C). Except as provided for in this rule, and except for certain professional athletes being traded among organizations,[5] H–2B workers seeking to extend their status with a new employer may not begin employment with the new employer until the new H–2B petition is approved.

The INA also authorizes DHS to impose appropriate remedies against an employer for a substantial failure to meet the terms and conditions of employing an H–2B nonimmigrant worker, or for a willful misrepresentation of a material fact in a petition for an H–2B nonimmigrant worker. INA section 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A). The INA expressly authorizes DHS to delegate certain enforcement authority to DOL. INA section 214(c)(14)(B), 8 U.S.C. 1184(c)(14)(B); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). DHS has delegated its authority under INA section 214(c)(14)(A)(i), 8 U.S.C. 1184(c)(14)(A)(i) to DOL. *See* DHS, Delegation of Authority to DOL under Section 214(c)(14)(A) of the INA (Jan. 16, 2009); *see also* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of an H–2B petition and a DOL-approved TLC). This enforcement authority has been delegated within DOL to the Wage and Hour Division (WHD), and is governed by regulations at 29 CFR part 503.

B. H–2B Numerical Limitations Under the INA

The INA sets the annual number of noncitizens who may be issued H–2B visas or otherwise provided H–2B nonimmigrant status to perform temporary nonagricultural work at 66,000, to be distributed semi-annually beginning in October and April. *See* INA sections 214(g)(1)(B) and (g)(10), 8 U.S.C. 1184(g)(1)(B) and (g)(10). With certain exceptions, described below, up to 33,000 noncitizens may be issued H–2B visas or provided H–2B nonimmigrant status in the first half of a fiscal year, and the remaining annual allocation, including any unused nonimmigrant H–2B visas from the first half of a fiscal year, will be available for employers seeking to hire H–2B workers during the second half of the fiscal year.[6] If insufficient petitions are approved to use all H–2B numbers in a given fiscal year, the unused numbers cannot be carried over for petition approvals for employment start dates

[3] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

[4] For purposes of this discussion, the Departments use the term ''noncitizen'' colloquially to be synonymous with the term ''alien'' as it is used in the Immigration and Nationality Act.

[5] *See* 8 CFR 214.2(h)(6)(vii) and 8 CFR 274a.12(b)(9).

[6] The Federal Government's fiscal year runs from October 1 of the prior year through September 30 of the year being described. For example, fiscal year 2022 is from October 1, 2021, through September 30, 2022.

beginning on or after the start of the next fiscal year.

In FYs 2005, 2006, 2007, and 2016, Congress exempted H–2B workers identified as returning workers from the annual H–2B cap of 66,000.[7] A returning worker is defined by statute as an H–2B worker who was previously counted against the annual H–2B cap during a designated period of time. For example, Congress designated that returning workers for FY 2016 needed to have been counted against the cap during FY 2013, 2014, or 2015.[8] DHS and the Department of State (DOS) worked together to confirm that all workers requested under the returning worker provision in fact were eligible for exemption from the annual cap (in other words, were issued an H–2B visa or provided H–2B status during one of the prior 3 fiscal years) and were otherwise eligible for H–2B classification.

Because of the strong demand for H–2B visas in recent years, the statutorily-limited semi-annual visa allocation, the DOL regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work,[9] and the DHS regulatory requirement that all H–2B petitions be accompanied by an approved TLC,[10] employers that wish to obtain visas for their workers under the semi-annual allotment must act early to receive a TLC and file a petition with U.S. Citizenship and Immigration Services (USCIS). As a result, DOL typically sees a significant spike in TLC applications from employers seeking to hire H–2B temporary or seasonal workers prior to the United States' warm weather months. For example, in FY 2022, based on TLC applications filed during the 3-day filing window of January 1 through 3, 2022, DOL's Office of Foreign Labor Certification (OFLC) received a total of 7,875 H–2B applications requesting 136,555 worker positions with an April 1, 2022, or later, work start date.[11] USCIS, in turn, received sufficient H–2B petitions to reach the second half of the fiscal year statutory cap by February 25, 2022.[12] Though not as early as recent years, this date continues to reflect an ongoing trend of higher H–2B demand in the second half of the fiscal year compared to the statutorily authorized level. Congress, in recognition of historical and current demand: (1) Allowed for additional H–2B workers through the FY 2016 reauthorization of the returning worker cap exemption; [13] and (2) for the last several fiscal years authorized supplemental caps under section 543 of Division F of the Consolidated Appropriations Act, 2017, Public Law 115–31 (FY 2017 Omnibus); section 205 of Division M of the Consolidated Appropriations Act, 2018, Public Law 115–141 (FY 2018 Omnibus); section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116–6 (FY 2019 Omnibus); section 105 of Division I of the Further Consolidated Appropriations Act, 2020, Public Law 116–94 (FY 2020 Omnibus); [14] section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus); and section 105 of Division O of the Consolidated Appropriations Act, 2021, FY 2021 Omnibus, sections 101 and 106(3) of Division A of Public Law 117–43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117–70, Further Continuing Appropriations Act, 2022 through February 18, 2022 (together, previous FY 2022 authority). The authorization for the current supplemental cap is under section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103 (FY 2022 Omnibus), which is discussed below.

C. FY 2022 Omnibus

On March 15, 2022, President Joseph Biden signed the FY 2022 Omnibus which contains a provision, section 204 of Division O, Title II, permitting the Secretary of Homeland Security, under certain circumstances and after consultation with the Secretary of Labor, to increase the number of H–2B visas available to U.S. employers, notwithstanding the otherwise-established statutory numerical limitation set forth in the INA. Specifically, section 204 provides that ''the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2022 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,'' may increase the total number of noncitizens who may receive an H–2B visa in FY 2022 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation.[15] The Secretary of Homeland Security has consulted with the Secretary of Labor, and this rule implements the authority contained in section 204.

Under the authority contained in section 204, DHS and DOL are jointly publishing this temporary final rule to authorize the issuance of no more than 35,000 additional visas through the end of the second half of FY 2022, to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form. The authority to approve H–2B petitions under this FY 2022 supplemental cap expires at the end of that fiscal year. Therefore, USCIS will not approve H–2B petitions filed in connection with this FY 2022 supplemental cap authority on or after October 1, 2022.

As noted above, since FY 2017, Congress has enacted a series of public

[7] INA section 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A), *see also* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, div. B, tit. IV, sec. 402.

[8] *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565.

[9] 20 CFR 655.15(b).

[10] *See* 8 CFR 214.2(h)(5)(i)(A).

[11] DOL, Announcements, *OFLC Conducts Randomization Process on H–2B Applications Submitted Requesting an April 1, 2022, Work Start Date, https://www.dol.gov/agencies/eta/foreign-labor/news* (Jan. 4, 2022). For historical context, with the FY 2021 statutory cap, DOL announced on January 5, 2021 that it received requests to certify 96,641 worker positions for start dates of work on April 1, 2021. DOL, Announcements, *OFLC Conducts Randomization Process on H–2B Applications Submitted Requesting an April 1, 2021, Work Start Date, https://www.dol.gov/agencies/eta/foreign-labor/news* (Jan. 5, 2021). On February 24, 2021, USCIS announced that it had received a sufficient number of petitions to reach the congressionally mandated H–2B cap for FY 2021. On February 12, 2021, the number of beneficiaries listed on petitions received by USCIS surpassed the total number of remaining H–2B visas available against the H–2B cap for the second half of FY 2021. In accordance with regulations, USCIS determined it was necessary to use a computer generated process, commonly known as a lottery, to ensure the fair and orderly allocation of H–2B visa numbers to meet, but not exceed, the remainder of the FY 2021 cap. 8 CFR 214.2(h)(8)(vii). On February 17, 2021, USCIS conducted a lottery to randomly select petitions from those received on February 12, 2021. USCIS, *H–2B Cap Reached for Second Half of FY2021, https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy-2021* (Feb. 24, 2021).

[12] USCIS, *H–2B Cap Reached for Second Half of FY2022, https://www.uscis.gov/newsroom/alerts/h-2b-cap-reached-for-second-half-of-fy-2022* (Mar. 1, 2022).

[13] INA section 214(g)(9)(a), 8 U.S.C. 1184(g)(9)(a), as revised by the Consolidated Appropriations Act of 2016 (Pub. L. 114–113). This authority expired on September 30, 2016.

[14] DHS, after consulting with DOL, did not publish a temporary final rule supplementing the H–2B cap for FY 2020 pursuant to the Further Consolidated Appropriations Act, 2020, Public Law 116–94.

[15] The highest number of returning workers in any such fiscal year was 64,716, which represents the number of beneficiaries covered by H–2B returning worker petitions that were approved for FY 2007. DHS also considered using an alternative approach, under which DHS measured the number of H–2B returning workers admitted at the ports of entry (66,792 for FY 2007).

laws providing the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap beyond the annual numerical limitation set forth in section 214 of the INA. The previous statutory provisions were materially identical to section 204 of the FY 2022 Omnibus, which is the same authority provided for FY 2022 by the recent continuing resolutions. During each fiscal year from FY 2017 through FY 2019, as well as during FY 2021 and in the first half of FY 2022, the Secretary of Homeland Security, after consulting with the Secretary of Labor, determined that the needs of some American businesses could not be satisfied in such year with U.S. workers who were willing, qualified, and able to perform temporary nonagricultural labor. On the basis of these determinations, on July 19, 2017, and May 31, 2018, DHS and DOL jointly published temporary final rules for FY 2017 and FY 2018, respectively, each of which allowed an increase of up to 15,000 additional H–2B visas for those businesses that attested that if they did not receive all of the workers requested on the Petition for a Nonimmigrant Worker (Form I–129), they were likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss.[16] A total of 12,294 H–2B workers were approved for H–2B classification under petitions filed pursuant to the FY 2017 supplemental cap increase.[17] In FY 2018, USCIS received petitions for more than 15,000 beneficiaries during the first 5 business days of filing for the supplemental cap and held a lottery on June 7, 2018. The total number of H–2B workers approved toward the FY 2018 supplemental cap increase was 15,788.[18] The vast majority of the H–2B petitions received under the FY 2017 and FY 2018 supplemental caps requested premium processing[19] and were adjudicated within 15 calendar days.

On May 8, 2019, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 30,000 additional H–2B visas for the remainder of FY 2019. The additional visas were limited to returning workers who had been counted against the H–2B cap or were otherwise granted H–2B status in the previous 3 fiscal years, and for those businesses that attested to a level of need such that, if they did not receive all of the workers requested on the Form I–129, they were likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss.[20] The Secretary determined that limiting returning workers to those who were issued an H–2B visa or granted H–2B status in the past 3 fiscal years was appropriate, as it mirrored the standard that Congress designated in previous returning worker provisions. On June 5, 2019, approximately 30 days after the supplemental visas became available, USCIS announced that it received sufficient petitions filed pursuant to the FY 2019 supplemental cap increase. USCIS did not conduct a lottery for the FY 2019 supplemental cap increase. The total number of H–2B workers approved towards the FY 2019 supplemental cap increase was 32,666.[21] The vast majority of these petitions requested premium processing and were adjudicated within 15 calendar days.

Although Congress provided the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap in FY 2020, the Secretary did not exercise that authority. DHS initially intended to exercise its authority and, on March 4, 2020, announced that it would make available 35,000 supplemental H–2B visas for the second half of fiscal year.[22] On March 13, 2020, then-President Trump declared a National Emergency concerning COVID–19, a communicable disease caused by the coronavirus SARS–CoV–2.[23] On April 2, 2020, DHS announced that the rule to increase the H–2B cap was on hold due to economic circumstances, and no additional H–2B visas would be released until further notice.[24] DHS also noted that the Department of State had suspended routine visa services.[25]

In FY 2021, although the COVID–19 public health emergency remained in effect, DHS in consultation with DOL determined it was appropriate to increase the H–2B cap for FY 2021 coupled with additional protections (for example, post-adjudication audits, investigations, and compliance checks), based on the demand for H–2B workers in the second half of FY 2021, as well as other factors that were occurring at that time, including the continuing economic growth, the improving job market, and increased visa processing capacity by the Department of State. Accordingly, on May 25, 2021, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 22,000 additional H–2B visas for the remainder of FY 2021.[26] The supplemental visas were available only to employers that attested they were likely to suffer irreparable harm without the additional workers. The allocation of 22,000 additional H–2B visas under that rule consisted of 16,000 visas available only to H–2B returning workers from one of the last three fiscal years (FY 2018, 2019, or 2020) and 6,000 visas that were initially reserved for Salvadoran, Guatemalan, and Honduran nationals, who were exempt from the returning worker requirement. As of August 13, 2021, USCIS received enough petitions for returning workers to reach the additional 22,000 H–2B visas made available under the FY 2021 H–2B supplemental visa temporary final rule.[27] The total number of H–2B workers approved towards the FY 2021 supplemental cap increase was 30,681.[28] This total number included approved H–2B petitions for 23,876

[16] Temporary Rule, Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program, 82 FR 32987, 32998 (July 19, 2017); Temporary Rule, Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program, 83 FR 24905, 24917 (May 31, 2018).

[17] USCIS data pulled from the Computer Linked Application Information Management System (CLAIMS3) database on Mar. 15, 2021. General information about CLAIMS 3 is available at *https://www.dhs.gov/publication/dhsuscispia-016-computer-linked-application-information-management-system-claims-3-and.*

[18] The number of approved workers exceeded the number of additional visas authorized for FY 2018 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS data pulled from CLAIMS3 on Mar. 15, 2021.

[19] Premium processing allows for expedited processing for an additional fee. *See* INA 286(u), 8 U.S.C. 1356(u).

[20] Temporary Rule, Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program, 84 FR 20005, 20021 (May 8, 2019).

[21] The number of approved workers exceeded the number of additional visas authorized for FY 2019 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS data pulled from CLAIMS3 on Mar. 15, 2021.

[22] DHS to Improve Integrity of Visa Program for Foreign Workers, March 5, 2020, *https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers.*

[23] Proclamation 9994 of Mar. 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

[24] *https://twitter.com/DHSgov/status/1245745115458568192?s=20.*

[25] *https://twitter.com/DHSgov/status/1245745116528156673.*

[26] 86 FR 28198 (May 25, 2021).

[27] *https://www.uscis.gov/news/alerts/cap-reached-for-remaining-h-2b-visas-for-returning-workers-for-fy-2021* (Aug. 19, 2021).

[28] The number of approved workers exceeded the number of additional visas authorized for FY 2021 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS H–2B petition approval data pulled from CLAIMS3 on March 16, 2022.

returning workers, as well as 6,805 beneficiaries from the Northern Central American countries.[29]

Similarly, earlier in FY 2022, DHS in consultation with DOL determined it was appropriate to increase the H–2B cap for FY 2022 positions with start dates on or before March 31, 2022, based on the demand for H–2B workers in the first half of FY 2022, continuing economic growth, increased labor demand, and increased visa processing capacity by the Department of State. Accordingly, on January 28, 2022, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 20,000 additional H–2B visas for the first half of FY 2022.[30] These supplemental visas were available only to employers that attested they were suffering or would suffer impending irreparable harm without the additional workers. The allocation of 20,000 additional H–2B visas under that rule consisted of 13,500 visas available only to H–2B returning workers from one of the last three fiscal years (FY 2019, 2020, or 2021) and 6,500 visas reserved for Salvadoran, Guatemalan, Honduran, and Haitian nationals, who were exempted from the returning worker requirement. As of March 31, 2022, the total number of H–2B workers approved towards the first half FY 2022 supplemental cap increase was 17,185, including 14,069 workers under the returning worker allocation, as well as 3,116 workers approved towards the Haitian/Northern Central American allocation.[31]

DHS in consultation with DOL believes that it is appropriate to further increase the H–2B cap through the end of the second half of FY 2022 based on the demand for H–2B workers in the second half of FY 2022, recent and continuing economic growth, increased labor demand,[32] and increased visa processing capacity by the Department of State. DHS and DOL also believe that it is appropriate to couple this cap increase with additional worker protections, as described below.

D. Joint Issuance of the Final Rule

As we did in FY 2017, FY 2018, FY 2019, FY 2021, and for the first half of FY 2022, DHS and DOL (the Departments) have determined that it is appropriate to jointly issue this temporary final rule.[33] The determination to issue the temporary final rule jointly follows conflicting court decisions concerning DOL's authority to independently issue legislative rules to carry out its consultative and delegated functions pertaining to the H–2B program under the INA.[34] Although DHS and DOL each have authority to independently issue rules implementing their respective duties under the H–2B program,[35] the Departments are implementing the numerical increase in this manner to ensure there can be no question about the authority underlying the administration and enforcement of the temporary cap increase. This approach is consistent with rules implementing DOL's general consultative role under INA section 214(c)(1), 8 U.S.C. 1184(c)(1), and delegated functions under INA sections 103(a)(6) and 214(c)(14)(B), 8 U.S.C. 1103(a)(6), 1184(c)(14)(B).[36]

III. Discussion

A. Statutory Determination

Following consultation with the Secretary of Labor, the Secretary of Homeland Security has determined that the needs of some U.S. employers cannot be satisfied for the remainder of FY 2022 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. In accordance with section 204 of the FY 2022 Omnibus, the Secretary of Homeland Security has determined that it is appropriate, for the reasons stated below, to raise the numerical limitation on H–2B nonimmigrant visas through the end of the second half of FY 2022 for positions with start dates on or after April 1, 2022 through September 30, 2022 up to 35,000 additional visas for those American businesses that attest that they are suffering irreparable harm or will suffer impending irreparable harm, in other words, a permanent and severe financial loss, without the ability to employ all of the H–2B workers requested on their petition. These businesses must retain documentation, as described below, supporting this attestation.

As we did in connection with the FY 2021 and prior FY2022 H–2B supplemental visa temporary final rules, and consistent with existing authority, DHS and DOL intend to conduct a significant number of audits with respect to petitions filed under this TFR requesting supplemental H–2B visas, which may be selected at the discretion of the Departments, during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule. If an employer's documentation does not meet the irreparable harm standard, or if the employer fails to provide evidence demonstrating irreparable harm or comply with the audit process, this may be considered a substantial violation resulting in an adverse agency action on the employer, including revocation of the petition and/or TLC or program debarment. Of the audits completed so far, some audits conducted of employers that received visas under the supplemental caps in FY 2021 and the first half of FY 2022 revealed concerns surrounding documentation of irreparable harm, recruitment efforts, and compliance with the audit process, which may warrant further review and action.

The Secretary of Homeland Security has also again determined, as he did in FY 2021 and earlier in FY 2022, that for certain employers, additional recruitment steps are necessary to confirm that there are no qualified U.S. workers available for the positions. In addition, the Secretary of Homeland Security has determined that the supplemental visas will be limited to returning workers, with the exception that up to 11,500 of the 35,000 visas will be exempt from the returning worker requirement and will be reserved for H–2B workers who are nationals of El Salvador, Guatemala, Honduras, and Haiti.[37] These H–2B visas are being

[29] USCIS H–2B petition approval data pulled from CLAIMS3 on March 16, 2022.

[30] 87 FR 4722 (Jan. 28, 2022); 87 FR 6017 (Feb. 3, 2022) (correction).

[31] USCIS H–2B petition approval data pulled from CLAIMS3 on March 31, 2022.

[32] The term ''increased labor demand'' in this context relies on the most recently released figure from a Bureau of Labor Statistics (BLS) survey at the time this TFR was written. The BLS Job Openings and Labor Turnover Survey (JOLTS) reports 11.3 million job openings in February 2022 (compared to 7.4 million job openings in February 2021). *See* Bureau of Labor Statistics, Job Openings and Labor Turnover Survey released on March 29, 2022 at *https://www.bls.gov/news.release/archives/jolts_03292022.pdf*, and the February 2021 survey released on April 6, 2021 at *https://www.bls.gov/news.release/archives/jolts_04062021.pdf*.

[33] 82 FR 32987 (Jul. 19, 2017); 83 FR 24905 (May 31, 2018); 84 FR 20005 (May 8, 2019); 86 FR 28198 (May 25, 2021); 87 FR 4722 (Jan. 28, 2022).

[34] See *Outdoor Amusement Bus. Ass'n* v. *Dep't of Homeland Sec.*, 983 F.3d 671 (4th Cir. 2020), cert. denied, 142 S. Ct. 425 (2021); see also Temporary Non-Agricultural Employment of H–2B Aliens in the United States, 80 FR 24041, 24045 (Apr. 29, 2015).

[35] See Outdoor Amusement Bus. Ass'n, 983 F.3d at 684–89.

[36] *See* 8 CFR 214.2(h)(6)(iii)(A) and (C), (h)(6)(iv)(A).

[37] These conditions and limitations are not inconsistent with sections 214(g)(3) (''first in, first out'' H–2B processing) and (g)(10) (fiscal year H–2B allocations) because noncitizens covered by the special allocation under section 204 of the FY 2022 Omnibus are not ''subject to the numerical limitations of [section 214(g)(1).]'' *See, e.g.,* INA section 214(g)(3); INA section 214(g)(10); FY 2022 Omnibus div. O, sec. 204 (''Notwithstanding the

Continued

reserved for nationals of El Salvador, Guatemala, and Honduras to once again further the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access to visa programs for nationals of the Northern Central American countries.[38] DHS observed robust employer interest in response to the FY 2021 H–2B supplemental visa allocation for Salvadoran, Guatemalan, and Honduran nationals and the previous FY 2022 supplemental visa allocation for Salvadoran, Guatemalan, Honduran, and Haitian nationals, with USCIS approving petitions on behalf of 6,805 beneficiaries under the FY 2021 allocation,[39] and 3,116 beneficiaries as of March 31, 2022, under the FY 2022 allocation for the first half of the fiscal year.[40] In addition, DHS and the Biden administration have continued to conduct outreach efforts promoting the H–2B program, among others, as a lawful pathway for nationals of El Salvador, Guatemala, Honduras, and Haiti to work in the United States. The decision to again reserve an allocation of supplemental H–2B visas for these nationals, while providing an exemption from the returning worker requirement, will provide ongoing support for the President's vision of expanding access to lawful pathways for protection and opportunity for individuals from these countries.[41]

Similar to the temporary final rules for the FY 2019, FY 2021 and previous FY 2022 supplemental caps, the Secretary of Homeland Security has also determined to limit the supplemental visas to H–2B returning workers, in other words, workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2019, 2020, or 2021,[42] unless the employer indicates on the new attestation form that it is requesting workers who are nationals of one of the Northern Central American countries or Haiti and who are therefore counted towards the 11,500 allotment regardless of whether they are new or returning workers. If the 11,500 returning worker exemption cap for Salvadoran, Guatemalan, Honduran, and Haitian nationals has been reached and visas remain available under the returning worker cap, the petition would be rejected and any fees submitted returned to the petitioner. In such a case, a petitioner may continue to request workers who are nationals of one of the Northern Central American countries or Haiti, but the petitioner must file a new Form I–129 petition, with fee, and attest that these noncitizens will be returning workers, in other words, workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2019, 2020, or 2021. Like the temporary final rule for the first half of FY 2022, if the 11,500 returning worker exemption cap for nationals of the Northern Central American countries and Haiti remains unfilled, DHS will *not* make unfilled visas reserved for Northern Central American countries and Haiti available to the general returning worker cap.

The Secretary of Homeland Security's determination to increase the numerical limitation is based, in part, on the conclusion that some businesses are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition. Members of Congress have informed the Secretaries of Homeland Security and Labor about the needs of some U.S. businesses for H–2B workers (after the statutory cap for the relevant half of the fiscal year has been reached) and about the potentially negative impact on state and local economies if the cap is not increased.[43] U.S. businesses, chambers of commerce, employer organizations, and state and local elected officials have also expressed concerns to the DHS and Labor Secretaries regarding the unavailability of H–2B visas after the statutory cap was reached.[44]

After considering the full range of evidence and diverse points of view, the Secretary of Homeland Security has deemed it appropriate to take action to prevent further severe and permanent financial loss for those employers currently suffering irreparable harm and to avoid impending irreparable harm for other employers unable to obtain H–2B workers under the statutory cap, including potential wage and job losses by their U.S. workers, as well as other adverse downstream economic effects.[45] At the same time, the Secretary of Homeland Security believes it is appropriate to condition receipt of supplemental visas on adherence to additional worker protections, as discussed below.

The decision to afford the benefits of this temporary cap increase to U.S. businesses that need H–2B workers because they are suffering irreparable harm already or will suffer impending irreparable harm, and that will comply with additional worker protections, rather than applying the cap increase to any and all businesses seeking temporary workers, is consistent with DHS's time-limited authority to increase the cap, as explained below. The Secretary of Homeland Security, in implementing section 204 and determining the scope of any such increase, has broad discretion, following consultation with the Secretary of Labor, to identify the business needs that are most relevant, while bearing in mind the need to protect U.S. workers. Within that context, for the below reasons, the Secretary of Homeland Security has determined to allow an overall increase of up to 35,000 additional visas, for positions with start dates on or after April 1, 2022 through September 30, 2022, solely for the businesses facing permanent, severe financial loss or those who will face such loss in the near future.

First, DHS interprets section 204's reference to ''the needs of American

numerical limitation set forth in section 214(g)(1)(B) of the [INA] . . . .'').

[38] *See* Section 3(c) of E.O. 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, signed February 2, 2021, *https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02561.pdf*. E.O. 14010 referred to the three countries of El Salvador, Guatemala, and Honduras as the ''Northern Triangle'', but this rule refers to these countries collectively as the Northern Central American countries.

[39] While USCIS approved a greater number of beneficiaries from the Northern Central American countries than the 6,000 visas allocated under the FY 2021 supplemental cap for those countries, the Department of State issued 3,065 visas on behalf of nationals from those countries. *See* DHS, USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, VIBE, DOS Visa Issuance Data queried 11.2021, TRK 8598. This discrepancy can be attributed to adverse impacts on consular processing caused by the COVID–19 pandemic, travel restrictions, as well as lack of readily available processes to efficiently match workers from Northern Central American countries with U.S. recruiters/employers on an expedited timeline. DHS anticipates that the normalization of consular services, easing of travel restrictions, the issuance of this rule earlier in the fiscal year, as well as the fact that this is the second year that DHS will make a specific allocation available for workers from the Northern Central American countries, will contribute to greater utilization of available visas under this allocation during FY 2022.

[40] USCIS H–2B petition approval data pulled from CLAIMS3 on March 31, 2022.

[41] *Id.*

[42] For purposes of this rule, these returning workers could have been H–2B cap exempt or extended H–2B status in FY 2019, 2020, or 2021. Additionally they may have been previously counted against the annual H–2B cap of 66,000 visas during FY 2019, 2020, or 2021, or the supplemental caps in FY 2019 or FY 2021.

[43] See the docket for this rulemaking for access to these letters.

[44] *Id.*

[45] *See, e.g.,* Impacts of the H–2B Visa Program for Seasonal Workers on Maryland's Seafood Industry and Economy, Maryland Department of Agriculture Seafood Marketing Program and Chesapeake Bay Seafood Industry Association (March 2, 2020), available at *https://mda.maryland.gov/documents/2020-H2B-Impact-Study.pdf* (last visited Apr. 5, 2022).

businesses'' as describing a need different from the need ordinarily required of employers in petitioning for an H–2B worker. Under the generally applicable H–2B program, each individual H–2B employer must demonstrate that it has a temporary need for the services or labor for which it seeks to hire H–2B workers. *See* 8 CFR 214.2(h)(6)(ii); 20 CFR 655.6. The use of the phrase ''needs of American businesses,'' which is not found in INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), or the regulations governing the standard H–2B cap, authorizes the Secretary of Homeland Security in allocating additional H–2B visas under section 204 to require that employers establish a need above and beyond the normal standard under the H–2B program, that is, an inability to find sufficient qualified U.S. workers willing and available to perform services or labor and that the employment of the H–2B worker will not adversely affect the wages and working conditions of U.S. workers, *see* 8 CFR 214.2(h)(6)(i)(A). DOL concurs with this interpretation.

Second, the approach set forth in this rule limits the increase in a way that is similar to the implementation of the supplemental caps in previous fiscal years, and provides protections against adverse effects on U.S. workers that may result from a cap increase, including, as in previous rules, requiring employers seeking H–2B workers under the supplemental cap to engage in additional recruitment efforts for U.S. workers. Additionally, the Secretary has determined that in the particular circumstances presented here, it is appropriate, within the limits discussed below, to tailor the availability of this temporary cap increase to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, in other words, those facing permanent and severe financial loss.

As noted above, to address the increased and, in some cases, impending need for H–2B workers in positions with start dates on or after April 1, 2022 through September 30, 2022, the Secretary of Homeland Security has determined that employers may petition for supplemental visas on behalf of up to 23,500 workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2019, 2020, or 2021. The last 3 fiscal years' temporal limitation in the returning worker definition in this temporary rule mirrors the temporal limitation Congress imposed in previous returning worker statutes.[46] Such workers (in other words, those who recently participated in the H–2B program and who now seek a new H–2B visa from DOS) have previously obtained H–2B visas and therefore have been vetted by DOS, would have departed the United States as generally required by the terms of their nonimmigrant admission, and therefore may obtain their new visas through DOS and begin work more expeditiously.[47] DOS has informed DHS that, in general, H–2B visa applicants who are able to demonstrate clearly that they have previously abided by the terms of their status granted by DHS have a higher visa issuance rate when applying to renew their H–2B visas, as compared with the overall visa applicant pool from a given country. Furthermore, consular officers are authorized to waive the in-person interview requirement for certain nonimmigrant visa applicants, including certain H–2B applicants, who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h).[48] We note that DOS has, in response to the COVID–19 pandemic, expanded interview waiver eligibility to certain first-time H–2 applicants,[49] potentially allowing such applicants to be processed with increased efficiency. However, there is no indication that this temporary measure will necessarily affect the overall visa issuance rates of applicants, which DOS has indicated is higher for returning workers who can demonstrate prior compliance with the program.

Limiting the supplemental cap to returning workers is beneficial because these workers have generally followed immigration law in good faith and demonstrated their willingness to return home when they have completed their temporary labor or services or their period of authorized stay, which is a condition of H–2B status. The returning worker condition therefore provides a basis to believe that H–2B workers under this cap increase will again abide by the terms and conditions of their visa or nonimmigrant status. The returning worker condition also benefits employers that seek to re-hire known and trusted workers who have a proven positive employment track record while previously employed as workers in this country. While the Departments recognize that the returning worker requirement may limit to an extent the flexibility of employers that might wish to hire non-returning workers, the requirement provides an important safeguard against H–2B abuse, which DHS considers to be a significant consideration.

In allocating up to 11,500 H–2B visas to nationals of the Northern Central American countries and Haiti while making the remaining allocation of up to 23,500 H–2B visas available to qualified returning workers, irrespective of their country of nationality, this rule strikes a balance between furthering the U.S. foreign policy interests of creating a comprehensive, whole-of-government framework—of which this allocation is one piece—to address and manage migration from the Northern Central American countries and Haiti and addressing the needs of certain H–2B employers that are suffering irreparable harm or will suffer impending irreparable harm. The United States has strong foreign policy interests in allocating up to 11,500 supplemental visas only to nationals of the Northern Central American countries or Haiti and exempting such persons from the returning worker requirement. The

[46] Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law. 109–13, div. B, tit. IV, sec. 402.

[47] The previous review of an applicant's qualifications and current evidence of lawful travel to the United States will generally lead to a shorter processing time of a renewal application. In addition, U.S. Department of State consular officers temporarily have flexibility to waive the in-person interview requirementof certain nonimmigrant visa applicants. *See, e.g.,* 86 FR 70735 (Dec. 13, 2021); *see also* DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[48] Some consular sections waive the in-person interview requirement for certain H–2B applicants who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h). Through December 31, 2022, certain first-time H–2B visa applicants, and certain H–2B visa applicants previously issued any type of visa within the last 48 months may be eligible for interview waiver. Additionally, certain H–2B applicants renewing visas in the same classification within 48 months of the prior visa's expiration are eligible for interview waiver. This waiver authorityvisa expiring has no sunset date. DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[49] The authority allowing for waiver of interview of certain first-time H–2 (temporary agricultural and non-agricultural workers) applicants is extended through the end of 2022. DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

Secretary of Homeland Security has determined that both the 11,500 limitation and the exemption from the returning worker requirement for nationals of the Northern Central American countries is again beneficial in light of President Biden's February 2, 2021 E.O. 14010, which instructed the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access for nationals of the Northern Central American countries to visa programs, as appropriate and consistent with applicable law, and to work toward addressing some of the causes of and managing migration throughout North and Central America. In response to this executive order, DHS seeks to promote and improve safety, security, and economic stability throughout the North and Central American region, and work with these countries to stem the flow of irregular migration in the region and enhance access to visa programs. Like the temporary final rule for the first half of FY 2022, DHS believes that including nationals of Haiti in this allocation of up to 11,500 supplemental visas will further promote and improve safety, security, and economic stability throughout this region, and is in the interests of the United States as a close partner and neighbor.[50] As DHS emphasized in its November 10, 2021 **Federal Register** notice adding Haiti to the list of countries whose nationals are eligible to participate in the H–2A and H–2B programs, sustainable development and the stability of Haiti is vital to the interests of the United States as a close partner and neighbor.[51]

The exemption from the returning worker requirement recognizes the small numbers of individuals, approximately 4,750 per year, from the three Northern Central American countries and Haiti who were previously granted H–2B visas in recent years.[52] Absent this exemption, there may be insufficient workers from these countries, which means that the rule might thereby fail to achieve its intended policy objective to provide additional temporary foreign workers for U.S. employers that are suffering irreparable harm or will suffer impending irreparable harm, while also enhancing access to the H–2B visa classification for nationals of the Northern Central American countries and Haiti.

Finally, like the temporary final rule for the first half of FY 2022 supplemental cap, this rule does *not* make available unfilled visas from the allocation for nationals of the Northern Central American countries and Haiti to the general supplemental cap for returning workers. As with the supplemental cap for returning workers, USCIS will stop accepting petitions received under the allocation for the Northern Central American countries and Haiti after September 15, 2022. This end date should provide H–2B employers ample time, should they choose, to petition for, and bring in, workers under the allocation for the Northern Central American countries and Haiti. This, in turn, provides an opportunity for employers to contribute to our country's efforts to promote and improve safety, security and economic stability in these countries to help stem the flow of irregular migration to the United States.

For all petitions filed under this rule and the H–2B program, generally, employers must establish, among other requirements, that insufficient qualified U.S. workers are available to fill the petitioning H–2B employer's job opportunity and that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly-employed U.S. workers. INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D); 20 CFR 655.1. To meet this standard of protection for U.S. workers and, in order to be eligible for additional visas under this rule, employers must have applied for and received a valid TLC in accordance with 8 CFR 214.2(h)(6)(iv)(A) and (D) and 20 CFR part 655, subpart A. Under DOL's H–2B regulations, TLCs are valid only for the period of employment certified by DOL and expire on the last day of authorized employment. 20 CFR 655.55(a).

In order to have a valid TLC, therefore, the employment start date on the employer's H–2B petition must not be different from the employment start date certified by DOL on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(D). Under generally applicable DHS regulations, the only exception to this requirement applies when an employer files an amended visa petition, accompanied by a copy of the previously approved TLC and a copy of the initial visa petition approval notice, at a later date to substitute workers as set forth under 8 CFR 214.2(h)(6)(viii)(B). This rule also requires additional recruitment for certain petitioners, as discussed below.

In sum, this rule increases the FY 2022 numerical limitation by up to 35,000 visas for positions with start dates on or before September 30, 2022, but also restricts the availability of those additional visas by prioritizing only the most significant business needs, and limiting eligibility to H–2B returning workers, unless the worker is a national of one of the Northern Central American countries or Haiti counted towards the 11,500 allocation that are exempt from the returning worker limitation. These provisions are each described in turn below.

B. Numerical Increase and Allocation of up to 35,000 Visas

The increase of up to 35,000 visas will help address the urgent needs of eligible employers for additional H–2B workers for those employers with employment needs for start dates on or before September 30, 2022.[53] The determination to allow up to 35,000 additional H–2B visas reflects a balancing of a number of factors including the demand for H–2B visas for the second half of FY 2022; current economic conditions; the general trend

[50] We note Congress' recent statement, in a separate provision within the FY 2022 Omnibus, that it is the policy of the United States to support the sustainable rebuilding and development of Haiti. *See* Section 102 of Division V of the Consolidated Appropriations Act, 2022, Public Law 117–103. *See also* 86 FR 62562 (sustainable development and the stability of Haiti is vital to the interests of the United States as a close partner and neighbor).

[51] *See Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs,* 86 FR 62559, 62562, *https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24534.pdf* (Nov. 10, 2021).

[52] DOS issued a combined total of approximately 33,275 H–2B visas to nationals of the Northern Central American countries and Haiti from FY 2015 through FY 2021, or approximately 4,750 per year. *See* DOS, *Monthly NIV Issuances, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html* (last visited Mar. 15, 2022); *Monthly Nonimmigrant Visa Issuance Statistics by Nationality and Visa Class, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html* (last visited Mar. 15, 2022).

[53] In contrast with section 214(g)(1) of the INA, 8 U.S.C. 1184(g)(1), which establishes a cap on the number of individuals who may be issued visas *or otherwise provided H–2B status* (emphasis added), and section 214(g)(10) of the INA, 8 U.S.C. 1184(g)(10), which imposes a first half of the fiscal year cap on H–2B issuance with respect to the number of individuals who may be issued visas *or are accorded [H–2B] status*'' (emphasis added), section 204 only authorizes DHS to increase the number of available H–2B *visas.* Accordingly, DHS will not permit individuals authorized for H–2B status pursuant to an H–2B petition approved under section 204 to change to H–2B status from another nonimmigrant status. *See* INA section 248, 8 U.S.C. 1258; *see also* 8 CFR part 248. If a petitioner files a petition seeking H–2B workers in accordance with this rule and requests a change of status on behalf of someone in the United States, the change of status request will be denied, but the petition will be adjudicated in accordance with applicable DHS regulations. Any noncitizen authorized for H–2B status under the approved petition would need to obtain the necessary H–2B visa at a consular post abroad and then seek admission to the United States in H–2B status at a port of entry.

of increased demand for H–2B visas from FY 2017 to FY 2021; H–2B returning worker data; the amount of time remaining for employers to hire and obtain H–2B workers in the fiscal year; concerns from Congress, state and local elected officials, U.S. businesses, chambers of commerce, and employer organizations expressing a need for additional H–2B workers; and the objectives of E.O. 14010. DHS believes the numerical increase both addresses the needs of U.S. businesses and, as explained in more detail below, furthers the foreign policy interests of the United States.

Section 204 of the FY 2022 Omnibus sets the highest number of H–2B returning workers who were exempt from the cap in certain previous years as the maximum limit for any increase in the H–2B numerical limitation for FY 2022.[54] Consistent with the statute's reference to H–2B returning workers, in determining the appropriate number by which to increase the H–2B numerical limitation, the Secretary of Homeland Security focused on the number of visas allocated to such workers in years in which Congress enacted returning worker exemptions from the H–2B numerical limitation. During each of the years the returning worker provision was in force, U.S. employers' standard business needs for H–2B workers exceeded the statutory 66,000 cap. The highest number of H–2B returning workers approved was 64,716 in FY 2007. In setting the number of additional H–2B visas to be made available during the second half of FY 2022, DHS considered this number, overall indications of increased need, and the availability of U.S. workers, as discussed below. On the basis of these considerations, DHS determined that it would be appropriate to make available up to 35,000 additional visas under the FY 2022 supplemental cap authority. The Secretary further considered the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access to visa programs for nationals of the Northern Central American countries, as well as to address some of the root causes of and manage migration throughout both North and Central America, including Haiti, and determined that reserving up to 11,500 of the up to 35,000 additional visas and exempting this number from the returning worker requirement for nationals from the Northern Central American countries or Haiti would be appropriate.

In past years, the number of beneficiaries covered by H–2B petitions filed exceeded the number of additional visas allocated under recent supplemental caps. In FY 2018, USCIS received petitions for approximately 29,000 beneficiaries during the first 5 business days of filing for the 15,000 supplemental cap. USCIS therefore conducted a lottery on June 7, 2018, to randomly select petitions that would be accepted under the supplemental cap. Of the petitions that were selected, USCIS issued approvals for 15,672 beneficiaries.[55] In FY 2019, USCIS received sufficient petitions for the 30,000 supplemental cap on June 5, 2019, but did not conduct a lottery to randomly select petitions that would be accepted under the supplemental cap. Of the petitions received, USCIS issued approvals for 32,717 beneficiaries. In FY 2021, USCIS received a sufficient number of petitions for the 22,000 supplemental cap on August 13, 2021, including a significant number of workers from Northern Central American countries.[56] Of the petitions received, USCIS issued approvals for 30,681 beneficiaries, including approvals for 6,805 beneficiaries under the allocation for the nationals of the Northern Central American countries.[57]

Data for the second half of FY 2022 clearly indicate an immediate need for additional supplemental H–2B visas through the end of FY 2022. As of March 31, 2022, DOL's Office of Foreign Labor Certification (OFLC) reports having approved 4,771 TLC applications with requested dates of need in the second half of FY 2022 for 79,947 H–2B workers.[58] Furthermore, USCIS received a sufficient number of H–2B petitions to reach the second half of the FY 2022 fiscal year statutory cap on February 25, 2022.[59]

In addition, although the public health emergency due to COVID–19 still exists,[60] DHS believes that issuing additional H–2B visas is appropriate in the context of the nation's economic recovery from the ongoing pandemic. In March 2020, the U.S. labor market was severely affected by the onset of the COVID–19 pandemic, pushing the national unemployment rate to near record levels and resulting in millions of U.S. workers being displaced from work.

In fiscal year 2021, approximately 88 percent of H–2B filings were for positions within just 5 sectors.[61] NAICS 56 (Administrative and Support and Waste Management and Remediation Services) accounted for 41.7% of filings, NAICS 71 (Accommodation and Food Services) accounted for 17.1%, NAICS

[54] During fiscal years 2005 to 2007, and 2016, Congress enacted ''returning worker'' exemptions to the H–2B visa cap, allowing workers who were counted against the H–2B cap in one of the three preceding fiscal years not to be counted against the upcoming fiscal year cap. Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, Sec. 402 (May 11, 2005); John Warner National Defense Authorization Act, Public Law 109–364, Sec. 1074 (Oct. 17, 2006); Consolidated Appropriations Act of 2016, Public Law 114–113, Sec. 565 (Dec. 18, 2015).

[55] USCIS recognizes it may have received petitions for more than 29,000 supplemental H–2B workers if the cap had not been exceeded within the first 5 days of opening. However, DHS estimates that not all of the 29,000 workers requested under the FY 2018 supplemental cap would have been approved and/or issued visas. For instance, although DHS approved petitions for 15,672 beneficiaries under the FY 2018 cap increase, the Department of State data shows that as of January 15, 2019, it issued only 12,243 visas under that cap increase. Similarly, DHS approved petitions for 12,294 beneficiaries under the FY 2017 cap increase, but the Department of State data shows that it issued only 9,160 visas.

[56] On June 3, USCIS announced that it had received enough petitions to reach the cap for the additional 16,000 H–2B visas made available for returning workers only, but that it would continue accepting petitions for the additional 6,000 visas allotted for nationals of the Northern Central American countries. *See https://www.uscis.gov/news/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-fy-2021* (June 3, 2021). On July 23, 2021, USCIS announced that, because it did not receive enough petitions to reach the allocation for the Northern Central American countries by the July 8 filing deadline, the remaining visas were available to H–2B returning workers regardless of their country of origin. *See https://www.uscis.gov/news/alerts/employers-may-file-h-2b-petitions-for-returning-workers-for-fy-2021* (July 23, 2021).

[57] The number of approved workers exceeded the number of additional visas authorized for FY 2018, FY 2019, as well as for FY 2021 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. Unlike these past supplemental cap TFRs, petitions filed under the first half FY 2022 TFR did not exceed the additional allocation of 20,000 H–2B visas provided by that rule. Under the previous FY 2022 supplemental cap for petitions with start dates in the first half of FY 2022, as of March 31, 2022, USCIS had issued approvals for 17,185 beneficiaries, including approvals for 3,116 beneficiaries under the allocation for nationals of the Northern Central American countries and Haiti. USCIS H–2B petition approval data pulled from CLAIMS3 on March 31, 2022.

[58] DOL OFLC memo to USCIS Office of Policy and Strategy March 31, 2022.

[59] On March 1, 2022, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H–2B visas for temporary nonagricultural workers for the second half of fiscal year 2022, and that February 25, 2022 was the final receipt date for new cap-subject H–2B worker petitions requesting an employment start date on or after April 1, 2022, and before October 1, 2022. *See* USCIS, USCIS Reaches H–2B Cap for First Half of FY 2022, *https://www.uscis.gov/newsroom/alerts/h-2b-cap-reached-for-second-half-of-fy-2022* (Mar. 1, 2022).

[60] *See* HHS, *Renewal of Determination That A Public Health Emergency Exists, https://aspr.hhs.gov/legal/PHE/Pages/COVID19-12Apr2022.aspx* (Apr. 12, 2022).

[61] USCIS analysis of DOL OLFC Performance data.

72 (Arts, Entertainment, and Recreation) accounted for 14.5%, NAICS 23 (Construction) accounted for 9.5%, and NAICS 11 (Agriculture, Forestry, Fishing and Hunting) accounted for 5% of filings.

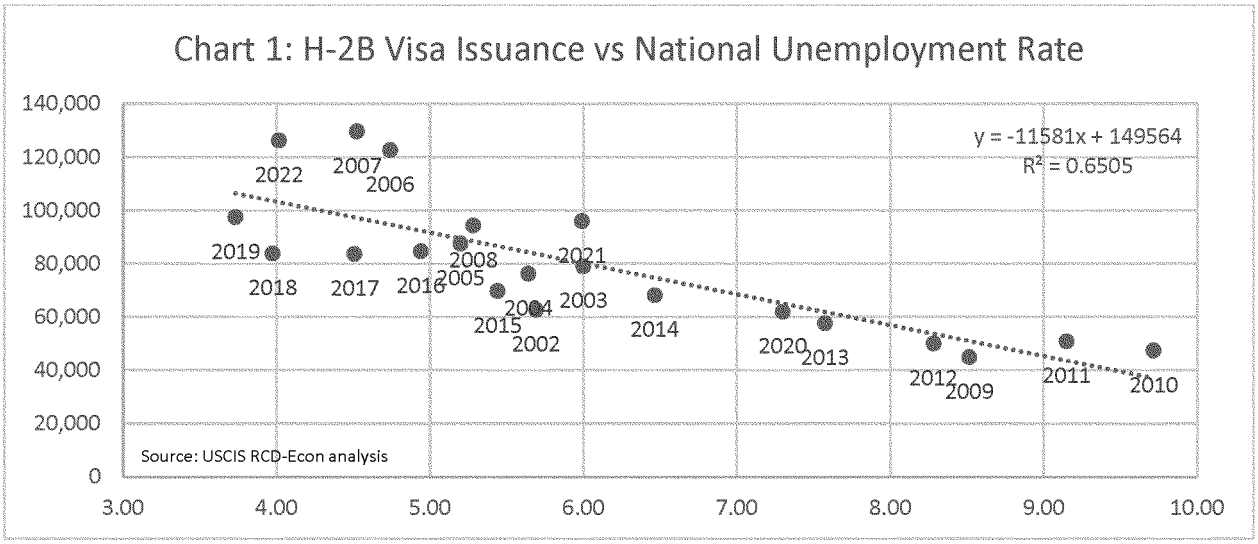
Within these industries, DOL data show increased labor demand over the last year. More specifically, DOL data from the March 29, 2022 Job Openings and Labor Turnover Survey (JOLTS) show that the rate of job openings [62] increased for all 5 industries between February 2021 and February 2022. The job opening rate for NAICS 56 [63] increased from 6.7 to 8.7 while the job opening rate for NAICS 71 went from 8.0 to 8.5. The job opening rate for NAICS 72 went from 6.7 to 10.2 while the rate for NAICS 23 went from 3.4 to 4.8. The job opening rate for NAICS 11 [64] increased from 3.5 to 5.4.

YEAR-OVER-YEAR CHANGE IN JOB OPENING RATE [65]

NAICS 11	NAICS 23	NAICS 56	NAICS 71	NAICS 72
1.9	1.4	2.0	0.5	3.5

The increase in the job openings rate across these industries is a clear indication of increased labor demand within these industries. The Departments believe that the supplemental allocation of H–2B visas described in this temporary final rule will help to meet increased job openings in these industries.

Other economy-wide data also indicate that labor-market tightness exists. The most recent Employment Situation released by the Bureau of Labor Statistics stated that the unemployment rate decreased to 3.6% in March 2022.[66] Historically, the availability of H–2B visas addressed a need in the labor market during periods of lower unemployment, additionally, when the unemployment rate is below 6% there is greater variance of H–2B visas. Chart 1 [67] shows that the estimated total H–2B visa issuance for Fiscal Year 2022 [68] is within past allocations of this program. The data presented here is meant to provide additional context and to demonstrate that the total allocation of H–2B visas is reasonable given labor market conditions.



[62] The JOLTS News Release states that the job openings rate is calculated by dividing the number of job openings by the sum of employment and job openings and multiplying that quotient by 100. *See https://www.bls.gov/news.release/archives/jolts_03292022.htm* (last visited April 4, 2022).

[63] JOLTS data presented here are for the Professional and Business Services Supersector, which is comprised of NAICS 54, NAICS 55 and NAICS 56. *See https://www.bls.gov/iag/tgs/iag60.htm.* As such, the data presented here should be understood to be the best possible proxy for changes in NAICS 56 and not a direct measurement of any specific change in the actual underlying sectors. The latest data available, for March 2022, from the Department of Labor's Current Employment Statistics program indicates that NAICS 56 accounted for just under 43% of employment in Professional Business Services. All data accessed April 28, 2022.

[64] JOLTS data presented here are for Mining and Logging, which is part of the Natural Resources and Mining Supersector. This supersector is comprised of NAICS 11 (Agriculture, Forestry, Fishing and Hunting) and NAICS 21 (Mining, Quarrying, and Oil and Gas Extraction). *See https://www.bls.gov/iag/tgs/iag10.htm.* As such, the data presented here should be understood to be the best possible proxy for changes in NAICS 11 and not a direct measurement of any specific change in the actual underlying sectors. The latest data available, for March 2022, from the Department of Labor's Current Employment Statistics program indicates that NAICS 11 accounted for just over 7% of employment in Natural Resources and Mining. All data accessed April 28, 2022.

[65] Year-over-year change was calculated as the difference between the February 2022 value for the respective industry and the February 2021 value. *See https://www.bls.gov/jlt/#data.* All data accessed March 29, 2022.

[66] *https://www.bls.gov/news.release/archives/empsit_04012022.htm.*

[67] Annual data presented here is on a fiscal year basis. Fiscal year averages were calculated by taking the average of the monthly unemployment rate for the months in each respective fiscal year (October–September). Data for 2022 are based on data for October 2021–March 2022.

[68] Estimated visas issued for Fiscal Year 2022 is based on the sum of the fiscal year statutory cap for H–2B workers (66,000), the supplemental allocation for the first half of Fiscal Year 2022 (20,000), and the supplemental allocation described in this Rule (35,000). Additionally, because H–2B visa issuance numbers generally exceed the number of allocated H–2B visas due to the cap exemptions USCIS estimated total FY2022 visa issuance by first calculating the ratio of visas issued to visas allocated over the last 5 fiscal years (XXX/YYY=Z) and then applying that ratio to the H–2B visa allocations for Fiscal Year 2022.

In addition, DOS announced in November 2021 that, as worldwide restrictions due to the COVID–19 pandemic begin to ease, and in line with the President's proclamation regarding the safe resumption of international travel,[69] the Bureau of Consular Affairs is focusing on reducing wait times for all consular services at embassies and consulates overseas while also protecting health and safety of staff and applicants.[70] To further streamline nonimmigrant visa processing, the Bureau of Consular Affairs used its authority to waive in-person visa interviews for certain H–2 applicants through December 31, 2022, and beyond 2022 for applicants renewing a visa in the same classification within 48 months of the visa's expiration.[71] We note, however, that in response to continued concerns about COVID variants, including the highly contagious Omicron variant and its most common lineages,[72] the Centers for Disease Control and Prevention (CDC) updated testing requirements for international air travel to the United States, which may have an impact on such travel.[73] Given the level of demand for H–2B workers, the continued economic recovery, the continued and projected job growth, and the resumption of visa processing services, DHS believes it is appropriate to release additional visas at this time. Further, DHS believes that 35,000 is an appropriate number of visas for the reasons discussed above.

Finally, recognizing the high demand for H–2B visas, it is plausible that the additional H–2B supplemental allocations provided in this rule will be reached prior to the end of the fiscal year. Specifically, the following scenarios may still occur:

- The 23,500 supplemental cap visas limited to returning workers that will be immediately available for employers will be reached before September 15, 2022.
- The 11,500 supplemental cap visas limited to nationals of the Northern Central American countries and Haiti will be reached before September 15, 2022.

DHS regulation, 8 CFR 214.2(h)(6)(xii)(E), reaffirms the use of the processes that are in place when H–2B numerical limitations under INA section 214(g)(1)(B) or (g)(10), 8 U.S.C. 1184(g)(1)(B) or (g)(10), are reached, as applicable to each of the scenarios described above that involve numerical limitations of the supplemental cap. Specifically, for each of the scenarios mentioned above, DHS will monitor petitions received, and make projections of the number of petitions necessary to achieve the projected numerical limit of approvals. USCIS will also notify the public of the dates that USCIS has received the necessary number of petitions (the ''final receipt dates'') for each of these scenarios. The day the public is notified will not control the final receipt dates. Moreover, USCIS may randomly select, via computer-generated selection, from among the petitions received on the final receipt date the remaining number of petitions deemed necessary to generate the numerical limit of approvals for each of the scenarios involving numerical limitations to the supplemental cap. USCIS may, but will not necessarily, conduct a lottery if: The 23,500 supplemental cap visas for returning workers is reached before September 15, 2022; or the 11,500 visas limited to nationals of the Northern Central American countries and Haiti is reached before September 15, 2022. Finally, similar to the processes applicable to the H–2B semi-annual statutory cap, if the final receipt date is any of the first 5 business days on which petitions subject to the applicable numerical limit may be received (in other words, if the numerical limit is reached on any one of the first 5 business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those 5 business days.

C. Returning Workers

Similar to the temporary increases in FY 2019, FY 2021, and the first half of FY 2022 the Secretary of Homeland Security has determined that the supplemental visas should be granted to returning workers from the past 3 fiscal years, in order to meet the immediate need for H–2B workers, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti and is counted towards the separate 11,500 cap for such workers. The Secretary has determined that, for purposes of this program, H–2B returning workers include those individuals who were issued an H–2B visa or were otherwise granted H–2B status in FY 2019, 2020, or 2021. As discussed above, the Secretary determined that limiting returning workers to those who were issued an H–2B visa or granted H–2B status in the past three fiscal years is appropriate as it mirrors the standard that Congress designated in previous returning worker provisions. Returning workers have previously obtained H–2B visas and therefore been vetted by DOS, would have departed the United States as generally required by the terms of their nonimmigrant admission, and therefore may have a higher likelihood of success in obtaining their new visas through DOS, possibly without a required interview, and begin work more expeditiously.

To ensure compliance with the requirement that additional visas only be made available to returning workers, petitioners seeking H–2B workers under the supplemental cap will be required to attest that each employee requested or instructed to apply for a visa under the FY 2022 supplemental cap was issued an H–2B visa or otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti and is counted towards the 11,500 cap. This attestation will serve as prima facie initial evidence to DHS that each worker, unless a national of one of the Northern Central American countries or Haiti who is counted against the 11,500 cap, meets the returning worker requirement. DHS and DOS retain the right to review and verify that each beneficiary is in fact a returning worker any time before and after approval of the petition or visa. DHS has authority to review and verify this attestation during the course of an audit or investigation, as otherwise discussed in this rule.

[69] Proclamation 10294 of Oct. 25, 2021, Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic, 86 FR 59603 (Oct. 28, 2021).

[70] *See* DOS, *Visa Services Operating Status Update, https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html* (last updated Nov. 19, 2021).

[71] *See* DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[72] *See* CDC, *Omicron Variant: What You Need to Know, https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html* (last updated Mar. 29. 2022).

[73] *See* CDC, *Requirement for Proof of Negative COVID–19 Test or Documentation of Recovery from COVID–19, https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html* (updated Jan. 27, 2022). The amended updates state, ''All air passengers 2 years or older with a flight departing to the U.S. from a foreign country at or after 12:01a.m. EST (5:01a.m. GMT) on December 6, 2021, are required [to] show a negative COVID–19 viral test result taken no more than 1 day before travel, or documentation of having recovered from COVID–19 in the past 90 days, before they board their flight.'' Changes made prior to the emergence of Omicron also reflect the evolving nature of the pandemic and potential impacts on international air travel by H–2B workers. *See* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

D. Returning Worker Exemption for Up to 11,500 Visas for Nationals of Guatemala, El Salvador, and Honduras (Northern Central American Countries) and Haiti

As described above, the Secretary of Homeland Security has determined that up to 11,500 additional H–2B visas will be limited to workers who are nationals of one of the Northern Central American countries or Haiti. These 11,500 visas will be exempt from the returning worker requirement. If the 11,500 visa limit has been reached and the 23,500 returning worker cap has not, petitioners may continue to request workers who are nationals of one of the Northern Central American countries or Haiti, but these noncitizens must be specifically requested as returning workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2019, 2020, or 2021.

DHS has determined that reserving 11,500 supplemental H–2B visas for nationals of the Northern Central American countries or Haiti—a number higher than the average annual number of visas issued to such persons in the past 7 fiscal years—will encourage U.S. employers that are suffering irreparable harm or will suffer impending irreparable harm to seek out workers from such countries, while, at the same time, increase interest among nationals of the Northern Central American countries and Haiti seeking a legal pathway for temporary employment in the United States. DHS also believes its outreach efforts with the governments of the Northern Central American countries and Haiti, along with efforts in some of these countries by the United States Agency for International Development (USAID) to increase access to the H–2B program, support the decision to provide a higher reservation of H–2B visas for these countries than it has in prior recent TFRs. USAID has worked to build government capacity in Northern Central America to facilitate access to temporary worker visas under the H–2 program. These efforts focus on systematic, orderly, and safe recruitment of workers, engagement with U.S. employers, and strengthening worker protections. In Fiscal Year 2021, USAID increased funding to expand capacity building activities in El Salvador, Guatemala, and Honduras in response to the increased demand generated by the supplemental allocation of 6,000 H–2B visas for Northern Central American nationals included in the FY 2021 TFR. The acceleration of USAID's activities in FY 2021 likely helped increase uptake of H–2B visas issuance under the FY 2021 TFR, as H–2B visa issuances to Salvadorans, Guatemalans and Hondurans exceeded pre-pandemic levels by nearly 40 percent in FY 2021,[74] and USAID's assistance helped reduce the average period of time to match qualified workers from these three countries to requests from U.S. employers—most significantly in Honduras, from 24 days to nine days. USAID's programs also strengthen worker protections by helping crowd out unethical recruiters and providing labor rights education and resources to seasonal workers.

DOS issued a combined total of approximately 26,630 H–2B visas to nationals of the Northern Central American countries or Haiti from FY 2015 through FY 2020, an average of approximately 4,400 per year.[75] In FY 2021, DOS issued a combined total of more than 6,600 visas to nationals of Northern Central American countries. This increase is likely due in part to the additional H–2B visas made available to nationals of these countries by the FY 2021 H–2B supplemental visa temporary final rule.[76] In addition, based in part on the vital U.S. interest of promoting sustainable development and the stability of Haiti, in November 2021, DHS added Haiti to the list of countries whose nationals are eligible to participate in the H–2A and H–2B programs.[77] Therefore, as previously stated, DHS has determined that the additional increase in FY 2022 will not only provide U.S. businesses who have been unable to find qualified and available U.S. workers with potential workers, but also promote further expansion of lawful immigration and lawful employment authorization for nationals of Northern Central American countries and Haiti.

While DHS reiterates the importance of limiting the general supplemental cap exclusively to returning workers, for the reasons stated previously, the Secretary has determined that the exemption from the returning worker requirement for nationals of the Northern Central American countries or Haiti is beneficial for the following reasons. It strikes a balance between furthering the U.S. foreign policy interests of expanding access to lawful pathways to nationals of the Northern Central American countries and Haiti seeking economic opportunity in the United States and addressing the needs of certain H–2B employers that are suffering irreparable harm or will suffer impending irreparable harm. This policy initiative would also support the strategies for the region described in E.O. 14010, which directs DHS to implement efforts to expand access to lawful pathways to the United States, including visa programs, as appropriate and consistent with the law through both protection-related and non-protection related programs. E.O. 14010 further directs relevant government agencies to create a comprehensive regional framework to address the causes of migration, and to manage migration throughout North and Central America.[78] The availability of workers from the Northern Central American countries and Haiti may promote safe and lawful immigration to the United States, as well as help provide U.S. employers with additional labor from neighboring countries with whom the Biden administration and DHS have engaged in outreach efforts to promote the H–2B program.

Similar to the discussion above regarding returning workers, DOS will work with the relevant countries to facilitate consular interviews, as required,[79] and channels for reporting incidents of fraud and abuse within the H–2 programs. Further, each country's own consular networks will maintain contact with the workers while in the United States and ensure the workers know their rights and responsibilities

[74] *See* DOS, *Monthly NIV Issuances by Nationality and Visa Class, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html* (last visited Mar. 15, 2022); *Monthly Nonimmigrant Visa Issuance Statistics, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html* (last visited Mar. 15, 2022).

[75] *Id.*

[76] *Id.*

[77] *See Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs,* 86 FR 62559, 62562, *https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24534.pdf (Nov. 10, 2021).*

[78] *See also National Security Council, Collaborative Migration Management Strategy, https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf (July 2021) (stating that* ''The United States has strong national security, economic, and humanitarian interests in reducing irregular migration and promoting safe, orderly, and humane migration'' within North and Central America).

[79] As noted previously, some consular sections may waive the in-person interview requirement for H–2B applicants whose prior visa expired within a specific timeframe and who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h). The authority allowing for waiver of interview of certain H–2 (temporary agricultural and non-agricultural workers) applicants is extended through the end of 2022. Certain applicants renewing a visa in the same classification within 48 months of the prior visa's expiration are also eligible for interview waiver. DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

under the U.S. immigration laws, which are all valuable protections to the immigration system, U.S. employers, U.S. workers, and workers entering the country on H–2 visas.

Nothing in this rule will limit the authority of DHS or DOS to deny, revoke, or take any other lawful action with respect to an H–2B petition or visa application at any time before or after approval of the H–2B petition or visa application.

E. Business Need Standard—Irreparable Harm and FY 2022 Attestation

To file any H–2B petition under this rule, petitioners must meet all existing H–2B eligibility requirements, including having an approved, valid, and unexpired TLC. *See* 8 CFR 214.2(h)(6) and 20 CFR part 655, subpart A. In addition, the petitioner must submit an attestation to USCIS in which the petitioner affirms, under penalty of perjury, that it meets the business need standard. Petitioners must be able to establish that they are suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on their petition.[80] The TLC process focuses on establishing whether a petitioner has a temporary need for workers and whether there are U.S. workers who are able, willing, qualified, and available to perform the temporary service or labor, and does not address the harm a petitioner is facing or will face in the absence of such workers; the attestation addresses this question. The attestation must be submitted directly to USCIS, together with Form I–129, the approved and valid TLC,[81] and any other necessary documentation. As in the rules implementing the FY 2017, FY 2018, FY 2019, FY 2021, and first half FY 2022 temporary cap increases, employers will be required to complete the new attestation form which can be found at: *https://www.foreignlaborcert.doleta.gov/form.cfm*.[82]

Prior to the first half FY 2022 temporary final rule, petitioners were only required to attest that they were likely to suffer irreparable harm if they were unable to employ all of the H–2B workers requested on their I–129 petition submitted under H–2B cap increase rules. In the previous FY 2022 temporary final rule, the Departments changed the standard to require employers to instead attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on the petition filed under the rule. This change was designed to focus more directly on the actual irreparable harm employers are suffering or the impending irreparable harm they will suffer as a result of their inability to employ H–2B workers, rather than on just the possibility of such harm. This standard will be applied to the instant temporary final rule, and employers will again be required to attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on the petition filed under this rule.

As noted above, Congress authorized the Secretary of Homeland Security, in consultation with the Secretary of Labor, to increase the total number of H–2B visas available ''upon the determination that the needs of American businesses cannot be satisfied'' with U.S. workers under the statutory visa cap.[83] The irreparable harm standard in this rule aligns with the determination that Congress requires DHS to make before increasing the number of H–2B visas available to U.S. employers. In particular, requiring employers to attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the requested H–2B workers is directly relevant to the needs of the business—if an employer is suffering or will suffer irreparable harm, then their needs are not being satisfied. The prior standard, on the other hand, required only that the employer attest that harm was *likely* to occur at some point in the future, which created uncertainty as to whether that employer's needs were truly unmet or would not be met without being able to employ the requested H–2B workers. Because the authority to increase the statutory cap is tied to the needs of businesses, the Departments think it is reasonable for employers to attest that they are suffering irreparable harm or that they will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition. If such employers are unable to attest to such harm and retain and produce (upon request) documentation of that harm, it calls into question whether their needs cannot in fact be satisfied without the ability to employ H–2B workers.

The ''are suffering irreparable harm or will suffer impending irreparable harm'' standard is also informed by the Departments' experiences in implementing the prior business need standard. In the Departments' experiences, the ''likely to suffer irreparable harm'' standard was difficult to assess and administer in the context of prior supplemental cap rules. For example, employers reported confusion with the standard, including some employers that were not able to provide adequate evidence of the prospective ''likelihood of irreparable harm'' when selected for an audit. The Departments therefore believe that asking employers to provide evidence of harm, as described in more detail later, that is occurring or is impending without the ability to employ all of the H–2B workers requested on their petition is a better means of ensuring compliance.

The attestation form will serve as prima facie initial evidence to DHS that the petitioner's business is suffering irreparable harm or will suffer impending irreparable harm. Any petition requesting H–2B workers under this FY 2022 supplemental cap that is lacking the requisite attestation form may be rejected in accordance with 8 CFR 103.2(a)(7)(ii) or denied in accordance with 8 CFR 103.2(b)(8)(ii), as applicable. Although this regulation does not require submission of evidence at the time of filing of the petition, other than an attestation, the employer must have such evidence on hand and ready to present to DHS or DOL at any time starting with the date of filing the I–129 petition, through the prescribed

[80] An employer may request fewer workers on the H–2B petition than the number of workers listed on the TLC. *See* Instructions for Petition for Nonimmigrant Worker, providing that ''the total number of workers you request on the petition must not exceed the number of workers approved by the Department of Labor or Guam Department of Labor, if required, on the temporary labor certification.''

[81] Since July 26, 2019, USCIS has been accepting a printed copy of the electronic one-page ETA–9142B, Final Determination: H–2B Temporary Labor Certification Approval, as an original, approved TLC. *See Notice of DHS's Requirement of the Temporary Labor Certification Final Determination Under the H–2B Temporary Worker Program,* 85 FR 13178, 13179 (Mar. 6, 2020).

[82] The attestation requirement does not apply to workers who have already been counted under the H–2B statutory cap for the second half of fiscal year 2022 (33,000). Further, the attestation requirement does not apply to noncitizens who are exempt from the fiscal year 2022 H–2B statutory cap, including those who are extending their stay in H–2B status. Accordingly, petitioners that are filing on behalf of such workers are not subject to the attestation requirement.

[83] Public Law 117–103 Consolidated Appropriations Act, 2022, section 204 (Mar. 15, 2022), Public Law 117–70 Further Extending Government Funding Act, Division A ''Further Continuing Appropriations Act, 2022'', section 101 (Dec. 3, 2021) changing the Public Law 117–43 expiration date in section 106(3) from Dec. 3, 2021 to Feb. 18, 2022, and Public Law 117–43 Extending Government Funding and Delivering Emergency Assistance Act, Division A ''Continuing Appropriations Act, 2022'', Section 101 and 106(3) (Oct. 3, 2021) providing DHS funding and authorities, including authority under section 105 of title I of Division O of Public Law 116–260, through December 3, 2021.

document retention period discussed below.

As with petitions filed under the FY 2021 and prior FY 2022 Supplemental TFRs, the Departments intend to select a significant number of petitions approved for audit examination to verify compliance with program requirements, including the irreparable harm standard and recruitment provisions implemented through this rule. Failure to provide evidence demonstrating irreparable harm or to comply with the audit process may be considered a substantial violation resulting in an adverse agency action on the employer, including revocation of the petition and/or TLC or program debarment. Similarly, failure to cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS or DOL as required by 8 CFR 214.2(h)(6)(xii)(B)(*2*)(*vi*) and (*vii*), respectively, may constitute a violation of the terms and conditions of an approved petition and lead to petition revocation under 8 CFR 214.2(h)(11)(iii)(A)(*3*).

The attestation submitted to USCIS will also state that the employer meets all other eligibility criteria for the available visas, including the returning worker requirement, unless exempt because the H–2B worker is a national of one of the Northern Central American countries or Haiti who is counted against the 11,500 visas reserved for such workers; will comply with all assurances, obligations, and conditions of employment set forth in the *Application for Temporary Employment Certification* (Form ETA 9142B and appendices) certified by DOL for the job opportunity (which serves as the TLC); will conduct additional recruitment of U.S. workers in accordance with the requirements of this rule and discussed further below; and will document and retain evidence of such compliance. Because the attestation will be submitted to USCIS as initial evidence with Form I–129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including but not limited to the following grounds: (1) Because the employer failed to demonstrate employment of all of the requested workers is necessary under the appropriate business need standard; and (2) the employer failed to demonstrate that it requested and/or instructed that each worker petitioned for is a returning worker, or a national of one of the Northern Central American countries or Haiti, as required by this rule. Any denial or revocation on such basis, however, would be appealable under 8 CFR part 103, consistent with DHS regulations and existing USCIS procedures.

It is the view of the Secretaries of Homeland Security and Labor that requiring a post-TLC attestation to USCIS is the most practical approach, given the time remaining in FY 2022 and the need to assemble the necessary documentation. In addition, the employer is required to retain documentation, which must be provided upon request by DHS or DOL, supporting the new attestations regarding (1) the irreparable harm standard, (2) the returning worker requirement, or, alternatively, documentation supporting that the H–2B worker(s) requested is a national of one of the Northern Central American countries or Haiti who is counted against the 11,500 (which may be satisfied by the separate Form I–129 that employers are required to file for such workers in accordance with this rule), and (3) a recruitment report for any additional recruitment required under this rule for a period of 3 years. *See* new 20 CFR 655.66. Although the employer must have such documentation on hand at the time it files the petition, the Departments have determined that, if employers were required to submit the attestation form to DOL before filing a petition with DHS, the attendant delays would render any visas unlikely to satisfy the needs of American businesses given TLC processing timeframes and the time remaining in this fiscal year. However, as noted above, the Departments will employ program integrity measures, including additional scrutiny by DHS of employers that have committed labor law violations in the H–2B program and continue to conduct audits, investigations, and/or post-adjudication compliance reviews on a significant number of H–2B petitions. As part of that process, USCIS may issue a request for additional evidence, a notice of intent to revoke, or a revocation notice, based on the review of such documentation, *see* 8 CFR 103.2(b) and 8 CFR 214.2(h)(11), and DOL's OFLC and WHD will be able to review this documentation and enforce the attestations during the course of an audit examination or investigation.

In accordance with the attestation requirements, under which petitioners attest that they meet the irreparable harm standard, that they are seeking to employ only returning workers (unless exempt as described above), and they meet the document retention requirements at new 20 CFR 655.66, the petitioner must retain documents and records fulfilling their responsibility to demonstrate compliance with this rule for 3 years from the date the TLC was approved, and must provide the documents and records upon the request of DHS or DOL. With regard to the irreparable harm standard, employers attesting that they are suffering irreparable harm must be able to provide concrete evidence establishing severe and permanent financial loss that is occurring; the scope and severity of the harm must be clearly articulable. Employers attesting that they will suffer impending irreparable harm must be able to demonstrate that severe and permanent financial loss will occur in the near future without access to the supplemental visas; it will not be enough to provide evidence suggesting that such harm may or is likely to occur; rather, the documentary evidence must show that impending harm will occur and document the form of such harm. Supporting evidence of the attestation may include, but is not limited to, the following types of documentation:

(1) Evidence that the business is suffering or will suffer in the near future permanent and severe financial loss due to the inability to meet financial or existing contractual obligations because they were unable to employ H–2B workers, including evidence of contracts, reservations, orders, or other business arrangements that have been or would be cancelled, and evidence demonstrating an inability to pay debts/bills;

(2) Evidence that the business is suffering or will suffer in the near future permanent and severe financial loss, as compared to prior years, such as financial statements (including profit/loss statements) comparing the employer's period of need to prior years; bank statements, tax returns, or other documents showing evidence of current and past financial condition; and relevant tax records, employment records, or other similar documents showing hours worked and payroll comparisons from prior years to the current year;

(3) Evidence showing the number of workers needed in the previous three seasons (FY 2019, 2020, and 2021) to meet the employer's need as compared to those currently employed or expected to be employed at the beginning of the start date of need. Such evidence must indicate the dates of their employment, and their hours worked (for example, payroll records) and evidence showing the number of H–2B workers it claims are needed, and the workers' actual

dates of employment and hours worked; and/or

(4) Evidence that the petitioner is reliant on obtaining a certain number of workers to operate, based on the nature and size of the business, such as documentation showing the number of workers it has needed to maintain its operations in the past, or will in the near future need, including but not limited to: A detailed business plan, copies of purchase orders or other requests for good and services, or other reliable forecast of an impending need for workers.

(5) With respect to satisfying the returning worker requirement, evidence that the employer requested and/or instructed that each of the workers petitioned by the employer in connection with this temporary rule were issued H–2B visas or otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti counted towards the 11,500 cap. Such evidence would include, but is not limited to, a date-stamped written communication from the employer to its agent(s) and/or recruiter(s) that instructs the agent(s) and/or recruiter(s) to only recruit and provide instruction regarding an application for an H–2B visa to those foreign workers who were previously issued an H–2B visa or granted H–2B status in FY 2019, 2020, or 2021.

These examples are not exhaustive, nor will they necessarily establish that the business meets the irreparable harm or returning worker standards; petitioners may retain other types of evidence they believe will satisfy these standards. When a petition is selected for audit examination, or investigation, DHS or DOL will review all evidence available to it to confirm that the petitioner properly attested to DHS, at the time of filing the petition, that their business was suffering irreparable harm or would suffer impending irreparable harm, and that they petitioned for and employed only returning workers, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti counted towards the 11,500 cap, among other attestations. If DHS subsequently finds that the evidence does not support the employer's attestations, DHS may deny or, if the petition has already been approved, revoke the petition at any time consistent with existing regulatory authorities. DHS may also, or alternatively, refer to DOL for further investigation. In addition, DOL may independently take enforcement action, including by, among other things, debarring the petitioner from the H–2B program for not less than 1 year or more than 5 years from the date of the final agency decision, which also disqualifies the debarred party from filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision. *See, e.g.,* 20 CFR 655.73; 29 CFR 503.20, 503.24.[84]

To the extent that evidence reflects a preference for hiring H–2B workers over U.S. workers, an investigation by additional agencies enforcing employment and labor laws, such as the Immigrant and Employee Rights Section (IER) of the Department of Justice's Civil Rights Division, may also be warranted. *See* INA section 274B, 8 U.S.C. 1324b (prohibiting certain types of employment discrimination based on citizenship status or national origin). Moreover, DHS and DOL may refer potential discrimination to IER pursuant to applicable interagency agreements. *See* IER, Partnerships, *https://www.justice.gov/crt/partnerships* (last visited Mar. 29, 2022). In addition, if members of the public have information that a participating employer may be abusing this program, DHS invites them to notify USCIS by completing the online fraud tip form, *https://www.uscis.gov/report-fraud/uscis-tip-form* (last visited Mar. 29, 2022).[85]

DHS, in exercising its statutory authority under INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), and section 204 of the FY 2022 Omnibus, is responsible for adjudicating eligibility for H–2B classification. As in all cases, the burden rests with the petitioner to establish eligibility by a preponderance of the evidence. INA section 291, 8 U.S.C. 1361. *Matter of Chawathe,* 25 I&N Dec. 369, 375–76 (AAO 2010). Accordingly, as noted above, where the petition lacks initial evidence, such as a properly completed attestation, DHS may, as applicable, reject the petition in accordance with 8 CFR 103.2(a)(7)(ii) or deny the petition in accordance with 8 CFR 103.2(b)(8)(ii). Further, where the initial evidence submitted with the petition contains inconsistencies or is inconsistent with other evidence in the petition and the underlying TLC, DHS may issue a Request for Evidence, Notice of Intent to Deny, or Denial in accordance with 8 CFR 103.2(b)(8). In addition, where it is determined that an H–2B petition filed pursuant to the FY 2022 Omnibus was granted erroneously, the H–2B petition approval may be revoked. *See* 8 CFR 214.2(h)(11).

Because of the particular circumstances of this regulation, and because the attestation and other requirements of this rule play a vital role in achieving the purposes of this rule, DHS and DOL intend that the attestation requirement, DOL procedures, and other aspects of this rule be non-severable from the remainder of the rule, including the increase in the numerical allocations.[86] Thus, in the event the attestation requirement or any other part of this rule is enjoined or held invalid, the remainder of the rule, with the exception of the retention requirements being codified in new 20 CFR 655.66, is also intended to cease operation in the relevant jurisdiction, without prejudice to workers already present in the United States under this regulation, as consistent with law.

F. Portability

As an additional option for employers that cannot find U.S. workers, and as an additional flexibility for H–2B employees seeking to begin work with a new H–2B employer, this rule allows petitioners to immediately employ certain H–2B workers who are present in the United States in H–2B status without waiting for approval of the H–2B petition, generally for a period of up to 60 days. Such workers must be beneficiaries of a non-frivolous H–2B petition requesting an extension of stay received on or after July 28, 2022 but no later than 180 days after that date.[87] Additionally, petitioners may immediately employ individuals who are beneficiaries of a non-frivolous H–2B petition requesting an extension of the worker's stay that is pending as of July 28, 2022 without waiting for approval of the H–2B petition. Specifically, the rule allows H–2B nonimmigrant workers to begin employment with a new H–2B employer

[84] Pursuant to the statutory provisions governing enforcement of the H–2B program, INA section 214(c)(14), 8 U.S.C. 1184(c)(14), a violation exists under the H–2B program where there has been a willful misrepresentation of a material fact in the petition or a substantial failure to meet any of the terms and conditions of the petition. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions. *See, e.g.,* 29 CFR 503.19.

[85] DHS may publicly disclose information regarding the H–2B program consistent with applicable law and regulations. For information about DHS disclosure of information contained in a system of records, *see https://www.dhs.gov/system-records-notices-sorns.* Additional general information about DHS privacy policy generally can be accessed at *https://www.dhs.gov/policy.*

[86] The Departments' intentions with respect to non-severability extend to all features of this rule other than the portability provision, which is described in the section below.

[87] Individuals who are the beneficiaries of petitions filed on the basis of 8 CFR 214.1(c)(4) are not eligible to port to a new employer under 8 CFR 214.2(h)(28).

or agent upon USCIS's receipt of a timely filed, non-frivolous H–2B petition, provided the worker was lawfully admitted to the United States and has not worked without authorization subsequent to such lawful admission. Since every H–2B petition must be accompanied by an approved TLC, all H–2B petitioners must have completed a test of the U.S. labor market, as a result of which DOL determined that there were no qualified U.S. workers available to fill these temporary positions.

The portability provision at new 8 CFR 214.2(h)(28)(iii)(A)(*1*)–(*2*) is the same as the portability provision offered in the prior FY2022 H–2B supplemental visa temporary final rule, which was codified at 8 CFR 214.2(h)(27)(iii)(A)–(B), and will begin upon the expiration of that provision. *See* new 8 CFR 214.2(h)(28)(iii)(A)(*1*)–(*2*). Additionally, the provision is similar to temporary flexibilities that DHS has used previously to improve employer access to noncitizen workers during the COVID–19 pandemic.[88] The employment authorization provided under this provision would end 15 days after USCIS denies the H–2B petition or such petition is withdrawn. This 15-day period of employment following an H–2B petition denial or withdrawal is consistent with prior H–2B supplemental cap temporary final rules, as well as with existing DHS regulations at 8 CFR 274a.12(b)(21), which allows certain E-Verify participants to employ H–2A workers immediately upon USCIS receipt of the H–2A petition without waiting for petition approval. DHS believes the 15-day period of employment under this rule's portability provision is appropriate, when a petition that has been filed on behalf of an H–2 worker is denied, given the passage of time between USCIS denial of the H–2B petition and the petitioner receiving notice of the denial. In addition, the provision is consistent with this temporary rule's goal of providing increased protections and flexibility for H–2B workers, as DHS believes immediate cessation of employment authorization under this provision for denied or withdrawn petitions may lead to undue hardship for noncitizens who would have only begun employment for a new H–2B employer, and who may have relocated to take on that employment opportunity.

The portability provision is in part intended to mitigate the harm that petitioners may experience resulting from the continuing COVID–19 pandemic by allowing petitioners to employ such H–2B workers so long as they were lawfully admitted to the United States and if they have not worked unlawfully after their admission. In the context of this rule, DHS believes this flexibility will help some U.S. employers address the challenges related to the limitations imposed by the cap, as well as due to the ongoing disruptions caused by the COVID–19 pandemic.

In addition to resulting in a devastating loss of life, the worldwide pandemic of COVID–19 has impacted the United States in myriad ways, disrupting daily life, travel, and the operation of individual businesses and the economy at large. On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency dating back to January 27, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d).[89] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed eight times: On April 21, 2020, on July 23, 2020, on October 2, 2020, on January 7, 2021, on April 15, 2021, on July 19, 2021, on October 15, 2021, and most recently on January 14, 2022.[90] As well, on March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus in the United States.[91] The proclamation declared that the emergency began on March 1, 2020. On February 18, 2022, President Biden issued a continuation of the National Emergency concerning the COVID–19 pandemic.[92] As of May 5, 2022, there have been over 513 million confirmed cases of COVID–19 identified globally, resulting in more than 6.2 million deaths.[93] Approximately 80,758,644 cases have been identified in the United States, with about 422,261 new cases identified in the 7 days preceding May 5, 2022, and approximately 988,595 reported deaths due to the disease.[94]

DOS temporarily suspended routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates on March 20, 2020, and subsequently announced a phased resumption of visa services in which it would continue to provide emergency and mission critical visa services and resume routine visa services as local conditions and resources allowed.[95] Based on the importance of the H–2A temporary agricultural worker and H–2B temporary nonagricultural worker programs, DOS indicated it would continue processing H–2A and H–2B cases to the extent possible, as permitted by post resources and local government restrictions, and expanded the categories of H–2 visa applicants whose applications can be adjudicated without an in-person interview.[96] Although routine visa services have resumed [97] subject to local conditions and restrictions, and DOS has expanded visa interview waiver eligibility,[98] the COVID–19 pandemic continues to have a significant impact on visa processing at embassies and consulates around the world.[99] And as noted above, continued

[88] 86 FR 28198 (May 25, 2021). On May 14, 2020, DHS published a temporary final rule in the **Federal Register** to amend certain H–2B requirements to help H–2B petitioners seeking workers to perform temporary nonagricultural services or labor essential to the U.S. food supply chain. 85 FR 28843 (May 14, 2020). In addition, on April 20, 2020, DHS issued a temporary final rule which, among other flexibilities, allowed H–2A workers to change employers and begin work before USCIS approved the new H–2A petition for the new employer. 85 FR 21739. DHS has subsequently extended that portability provision for H–2A workers through two additional temporary final rules, on August 20, 2020, and December 18, 2020, which have been effective for H–2A petitions that were received on or after August 19, 2020 through December 17, 2020, and on or after December 18, 2020 through June 16, 2021, respectively. 85 FR 51304 and 85 FR 82291.

[89] HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020).

[90] HHS, *Renewal of Determination That A Public Health Emergency Exists, https://aspr.hhs.gov/legal/PHE/Pages/COVID19-14Jan2022.aspx* (Jan. 14, 2022).

[91] Proclamation 9994 of Mar. 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

[92] *Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic,* 87 FR 10289 (Feb. 23, 2022); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337.

[93] World Health Organization, *WHO Coronavirus (COVID–19) Dashboard, https://covid19.who.int/* (last visited May 5, 2022).

[94] *Id.*

[95] DOS, *Suspension of Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated July 22, 2020).

[96] DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[97] DOS, *Visa Services Operating Status Update, https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html* (last updated Nov. 19, 2021).

[98] DOS, *Expanded Interview Waivers for Certain Nonimmigrant Visa Applicants, https://www.state.gov/expanded-interview-waivers-for-certain-nonimmigrant-visa-applicants/* (last updated Dec. 23, 2021).

[99] *See* DOS, U.S. Embassy and Consulates in Mexico, *Status of Visa Processing at the U.S. Embassy and Consulates in Mexico, https://mx.usembassy.gov/visas/* (last updated March 17, 2022). For nonimmigrant visas, the U.S. Embassy and consulates in Mexico have resumed limited processing of visas, however, they note that,

concerns about COVID variants prompted updated testing requirements for international air travel to the United States, which may have an impact on such travel.

Further, due to the possibility that some H–2B workers may be unavailable due to travel restrictions, to include those intended to limit the spread of COVID–19, or visa processing delays or may become unavailable due to COVID–19 related illness, U.S. employers that have approved H–2B petitions or who will be filing H–2B petitions in accordance with this rule might not receive all of the workers requested to fill the temporary positions.

DHS is strongly committed not only to protecting U.S. workers and helping U.S. businesses receive the documented workers authorized to perform temporary nonagricultural services or labor that they need, but also to protecting the rights and interests of H–2B workers (consistent with Executive Order 13563 and in particular its reference to ''equity,'' ''fairness,'' and ''human dignity''). In the FY 2020 DHS Further Consolidated Appropriations Act (Pub. L. 116–94), Congress directed DHS to provide options to improve the H–2A and H–2B visa programs, to include options that would protect worker rights.[100] DHS has determined that providing H–2B nonimmigrant workers with the flexibility of being able to begin work with a new H–2B petitioner immediately and avoid a potential job loss or loss of income while the new H–2B petition is pending, provides some certainty to H–2B workers who may have found themselves in situations that warrant a change in employers.[101] Providing that flexibility is also equitable and fair.

Portability for H–2B workers provides these noncitizens with the option of not having to worry about job loss or loss of income between the time they leave a current employer and while they await approved employment with a new U.S. employer or agent. This flexibility (job portability) seeks to protect H–2B workers and also provide an alternative to H–2B petitioners who have not been able to find U.S. workers and who have not been able to obtain H–2B workers subject to the statutory or supplemental caps who have the skills to perform the job duties. In that sense as well, it is equitable and fair.

DHS is making this flexibility available for an additional 180-day period in order to provide stability for H–2B employers amidst continuing uncertainties surrounding the COVID–19 pandemic. This period is justified especially given the possible future impacts of COVID–19 variants and uncertainty regarding the duration of vaccine-gained immunity and how effective currently approved vaccines will be in responding to future COVID–19 variants.[102] Evidence suggests some variants may spread more quickly and easily than others, and while some variants may emerge and disappear others may persist.[103] DHS will continue to monitor the evolving health crisis caused by COVID–19 and may address it in future rules.

G. COVID–19 Worker Protections

It is the policy of DHS and its Federal partners to support equal access to the COVID–19 vaccines and vaccine distribution sites, irrespective of an individuals' immigration status.[104] This policy promotes fairness and equity (see Executive Order 13563). Accordingly, DHS and DOL encourage all individuals, regardless of their immigration status, to receive the COVID–19 vaccine.

U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) do not conduct enforcement actions at or near vaccine distribution sites or clinics. Consistent with DHS' protected areas policy, ICE and CBP generally do not carry out enforcement actions in or near protected areas, including at medical or mental healthcare facilities, such as a hospital, doctor's office, health clinic, vaccination or testing site, urgent care center, site that serves pregnant individuals, or community health center.[105]

This TFR reflects that policy by providing as follows:

Supplemental H–2B Visas: With respect to petitioners who wish to qualify to receive supplemental H–2B visas pursuant to the FY 2022 Omnibus, the Departments are using the DOL Form ETA–9142–B—CAA–6 to support equal access to vaccines in two ways. First, the Departments are requiring such petitioners to attest on the DOL Form ETA–9142–B–CAA–6 that, consistent with such petitioners' obligations under generally applicable H–2B regulations, they will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site. *See* new 8 CFR 214.2(h)(6)(xii)(B)(*2*)(*iv*) and 20 CFR 655.65(a)(4). Second, the Departments are requiring such petitioners to also attest that they will notify any H–2B workers approved under the supplemental cap, in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites. WHD has published a poster for employers' optional use for this notification.[106] Because the attestation will be submitted to USCIS as initial evidence with Form I–129, DHS considers the attestation to be evidence that is incorporated into and a

''Applicants should expect a longer-than-normal wait time for this service and plan accordingly.''

[100] The Joint Explanatory Statement accompanying the *Fiscal Year* (FY) *2020 Department of Homeland Security* (DHS) *Further Consolidated Appropriations Act* (Pub. L. 116–94) states, ''Not later than 120 days after the date of enactment of this Act, DHS, the Department of Labor, the Department of State, and the United States Digital Service are directed to report on options to improve the execution of the H–2A and H–2B visa programs, including: processing efficiencies; combatting human trafficking; protecting worker rights; and reducing employer burden, to include the disadvantages imposed on such employers due to the current semiannual distribution of H–2B visas on October 1 and April 1 of each fiscal year. USCIS is encouraged to leverage prior year materials relating to the issuance of additional H–2B visas, to include previous temporary final rules, to improve processing efficiencies.''

[101] The White House, The National Action Plan to Combat Human Trafficking, Priority Action 1.5.3, at p. 25 (Dec 2021); The White House, The National Action Plan to Combat Human Trafficking, Priority Action 1.6.3, at p. 20–21 (2020) (Stating that ''[w]orkers sometimes find themselves in abusive work situations, but because their immigration status is dependent on continued employment with the employer in whose name the visa has been issued, workers may be left with few options to leave that situation.''). By providing the option of changing employers without risking job loss or a loss of income through the publication of this rule, DHS believes that H–2B workers may be more likely to leave abusive work situations, and thereby are afforded greater worker protections.

[102] *See* CDC, What You Need to Know about Variants, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html* (last updated Feb. 25, 2022); as well as, CDC, Frequently Asked Questions About COVID–19 Vaccination, *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html* (last updated Feb. 28, 2022).

[103] *See* CDC, What You Need to Know about Variants, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html* (last updated Apr. 15, 2022).

[104] *See* DHS, Statement on Equal Access to COVID–19 Vaccines and Vaccine Distribution Sites, *https://www.dhs.gov/news/2021/02/01/dhs-statement-equal-access-covid-19-vaccines-and-vaccine-distribution-sites* (Feb. 1, 2021) (last accessed Mar. 23, 2022).

[105] *See* ICE, FAQs: Protected Areas and Courthouse Arrests, *https://www.ice.gov/about-ice/ero/protected-areas* (last visited Mar. 23, 2022).

[106] *See* DOL, *Employee Rights—H–2B Workers and COVID–19, https://www.dol.gov/sites/dolgov/files/WHD/posters/H2B_COVID.pdf* (English); *https://www.dol.gov/sites/dolgov/files/WHD/posters/H2B_COVID_SPA.pdf* (Spanish) (last visited Mar. 23, 2022).

part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including, but not limited to, because the employer violated an applicable employment-related law or regulation, or failed to notify workers regarding equal access to COVID–19 vaccines and vaccine distribution sites.

Other H–2B Employers: While there is no additional attestation with respect to H–2B petitioners that do not avail themselves of the supplemental H–2B visas made available under this rule, the Departments remind all H–2B employers that they must comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site. Failure to comply with such laws and regulations would be contrary to the attestation 7 on ETA 9142B—Appendix B, and therefore may be a basis for DHS to revoke the petition under 8 CFR 214.2(h)(11)(iii)(A)(*3*) for violating terms and conditions of the approved petition.[107] This obligation is also reflected as a condition of H–2B portability under this rule. *See* new 8 CFR 214.2(h)(28)(iii)(B).

President Biden, in his speech to Joint Session of Congress on April 21, 2021, made the following statement: ''[T]oday, I'm announcing a program to address [the issue of COVID vaccinations] . . . nationwide. I'm calling on every employer, large and small, in every state, to give employees the time off they need, with pay, to get vaccinated and any time they need, with pay, to recover if they are feeling under the weather after the shot.'' [108] More recently, President Biden reiterated his call on employers to provide paid time off to their employees to get booster shots.[109] Consistent with the President's statements, the Departments strongly urge, but do not require, that all employers seeking H–2B workers under either the Supplemental Cap or portability sections of the TFR make every effort to ensure that all their workers, including nonimmigrant workers, be afforded an opportunity to take the time off needed to receive their COVID–19 vaccinations, as well as time off, with pay, to recover from any temporary side effect. In Proclamation 10294 of October 25, 2021, the President barred the entry of nonimmigrants into the United States via air transportation unless they are fully vaccinated against COVID–19, with certain exceptions.[110] On January 22, 2022, similar requirements entered into force at land ports of entry and ferry terminals.[111] The Departments therefore expect that H–2B nonimmigrants who enter the United States under this rule will generally be fully vaccinated against COVID–19. The Departments note, however, that some H–2B nonimmigrants (such as nonimmigrants who are already in the United States) may not yet be vaccinated or may nonetheless be eligible for booster shots.

As noted, Executive Order 13563 refers to fairness, equity, and human dignity, and such efforts, on the part of employers, would be consistent with those commitments.

Petitioners otherwise are strongly encouraged to facilitate and provide flexibilities, to the greatest extent possible, to all workers who wish to receive COVID–19 vaccinations.

H. DHS Petition Procedures

To petition for H–2B workers under this rule, the petitioner must file a Form I–129 in accordance with applicable regulations and form instructions, an unexpired TLC, and the attestation form described above. All H–2B petitions must state the nationality of all the requested H–2B workers, whether named or unnamed, even if there are beneficiaries from more than one country. *See* 8 CFR 214.2(h)(2)(iii). If filing multiple Forms I–129 based on the same TLC (for instance, one requesting returning workers and another requesting workers who are nationals of one of the Northern Central American countries or Haiti), each H–2B petition must include a copy of the TLC and reference all previously-filed or concurrently filed petitions associated with the same TLC. The total number of requested workers may not exceed the total number of workers indicated on the approved TLC. Petitioners seeking H–2B classification for nationals of the Northern Central American countries or Haiti under the 11,500 visa allocation that are exempt from the returning worker provision must file a separate Form I–129 for those nationals of the Northern Central American countries and Haiti only. *See* new 8 CFR 214.2(h)(6)(xii). In this regard, a petition must be filed with a single Form ETA–9142–B–CAA–6 that clearly indicates that the petitioner is only requesting nationals from a Northern Central American country or Haiti who are exempt from the returning worker requirement. Specifically, if the petitioner checks Box #5 of Form ETA–9142–B–CAA–6, then the petition accompanying that form *must* be filed only on behalf of nationals of one or more of the Northern Central American countries or Haiti, and not other countries. In such a case if the Form I–129 petition is requesting beneficiaries from countries other than Northern Central American countries or Haiti, then USCIS may reject, issue a request for evidence, notice of intent to deny, or denial, or, in the case of a non-frivolous petition, a partial approval limiting the petition to the number of beneficiaries who are from one of the Northern Central American countries or Haiti. Requiring the filing of separate petitions to request returning workers and to request workers who are nationals of the Northern Central American countries or Haiti is necessary to ensure the operational capability to properly calculate and manage the respective additional cap allocations and to ensure that all corresponding visa issuances are limited to qualifying applicants, particularly when such petitions request unnamed beneficiaries or are relied upon for subsequent requests to substitute beneficiaries in accordance with 8 CFR 214.2(h)(6)(viii). The attestations must be filed on Form ETA–9142–B–CAA–6, Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 204 of Division O of the Further Consolidated Appropriations Act, 2022, Public Law 117–103. *See* new 20 CFR 655.65. Petitioners are required to retain a copy of such attestations and all supporting evidence for 3 years from the date the associated TLC was approved, consistent with 20 CFR 655.56 and 29 CFR 503.17. *See* new 20 CFR 655.66. Petitions submitted to DHS pursuant to the FY 2022 Omnibus will be processed

[107] During the period of employment specified on the Temporary Labor Certification, the employer must comply with all applicable Federal, State and local employment-related laws and regulations, including health and safety laws. 20 CFR 655.20(z). By submitting the Temporary Labor Certification as evidence supporting the petition, it is incorporated into and considered part of the benefit request under 8 CFR 103.2(b)(1).

[108] *See https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/21/remarks-by-president-biden-on-the-covid-19-response-and-the-state-of-vaccinations-2/* (April 21, 2021).

[109] *See https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-president-biden-announces-new-actions-to-protect-americans-against-the-delta-and-omicron-variants-as-we-battle-covid-19-this-winter/* (December 2, 2021).

[110] *See* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

[111] *See* 87 FR 3425 (Jan. 24, 2022) (restrictions at United States-Mexico border); 87 FR 3429 (Jan. 24, 2022) (restrictions at United States-Canada border).

in the order in which they were received within the relevant supplemental allocation, and pursuant to processes parallel to those in place for when numerical limitations are reached under INA section 214(g)(1)(B) or (g)(10), 8 U.S.C. 1184(g)(1)(B) or (g)(10).

Based on the time-limited authority granted to DHS by section 204 of the under the FY 2022 Omnibus, DHS is notifying the public that petitions seeking a visa under this rule may not be approved by USCIS on or after October 1, 2022. *See* new 8 CFR 214.2(h)(6)(xii)(C).

Petitions pending with USCIS that are not approved before October 1, 2022 will be denied and any fees will not be refunded. *See* new 8 CFR 214.2(h)(6)(xii)(C).

DHS believes that 15 days from the end of the fiscal year is the minimum time needed for petitions to be adjudicated, although USCIS cannot guarantee the time period will be sufficient in all cases. Therefore, even if the supplemental allocations provided in this rule have not yet been reached, USCIS will stop accepting petitions received after September 15, 2022. *See* new 8 CFR 214.2(h)(6)(xiii)(C). Such petitions will be rejected and the filing fees will be returned.

Petitioners may choose to request premium processing of their petitions under 8 CFR 103.7(e), which allows for expedited processing for an additional fee.

I. DOL Procedures

As noted above, all employers are required to have an approved and valid TLC from DOL in order to file a Form I–129 petition with DHS. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D). The standards and procedures governing the submission and processing of Applications for Temporary Employment Certification for employers seeking to hire H–2B workers are set forth in 20 CFR part 655, subpart A. An employer that seeks to hire H–2B workers must request a TLC in compliance with the application filing requirements set forth in 20 CFR 655.15 and meet all the requirements of 20 CFR part 655, subpart A, to obtain a valid TLC, including the criteria for certification set forth in 20 CFR 655.51. *See* new 20 CFR 655.65(a) and 655.50(b). Employers with an approved TLC have conducted recruitment, as set forth in 20 CFR 655.40 through 655.48, to determine whether U.S. workers are qualified and available to perform the work for which H–2B workers are sought.

The H–2B regulations require that, among other things, an employer seeking to hire H–2B workers in a non-emergency situation must file a completed Application for Temporary Employment Certification with the National Processing Center (NPC) designated by the OFLC Administrator no more than 90 calendar days and no fewer than 75 calendar days before the employer's date of need (*i.e.,* start date for the work). *See* 20 CFR 655.15.

Under 20 CFR 655.17, an employer may request a waiver of the time period(s) for filing an Application for Temporary Employment Certification based on ''good and substantial'' cause, provided that the employer has sufficient time to thoroughly test the domestic labor market on an expedited basis and the OFLC certifying officer (CO) has sufficient time to make a final determination as required by the regulation. To rely on this provision, as the Departments explained in the 2015 H–2B Interim Final Rule, the employer must provide the OFLC CO with detailed information describing the ''good and substantial cause'' necessitating the waiver. Such cause may include the substantial loss of U.S. workers due to Acts of God, or a similar unforeseeable human-made catastrophic event that is wholly outside the employer's control, unforeseeable changes in market conditions, or pandemic health issues. Thus, to ensure an adequate test of the domestic labor market and to protect the integrity of the H–2B program, the Departments clearly intended that use of emergency procedures must be narrowly construed and permitted in extraordinary and unforeseeable catastrophic circumstances that have a direct impact on the employer's need for the specific services or labor to be performed. Even under the existing H–2B statutory visa cap structure, DOL considers USCIS' announcement(s) that the statutory cap(s) on H–2B visas has been reached, which may occur with regularity every six months depending on H–2B visa need, as foreseeable, and therefore not within the meaning of ''good and substantial cause'' that would justify a request for emergency procedures. Accordingly, employers cannot rely solely on the supplemental H–2B visas made available through this rule as good and substantial cause to use emergency procedures under 20 CFR 655.17.

In addition to the recruitment already conducted in connection with a valid TLC, in order to ensure the recruitment has not become stale, employers that wish to obtain visas for their workers under 8 CFR 214.2(h)(6)(xii), and who file an I–129 petition 30 or more days after the certified start date of work on the TLC must conduct additional recruitment for U.S. workers. This is particularly important as U.S. workers continue to reenter the workforce as they become vaccinated and boosted. As noted in the 2015 H–2B Interim Final Rule, U.S. workers seeking employment in temporary or seasonal nonagricultural jobs typically do not search for work months in advance, and cannot make commitments about their availability for employment far in advance of the work start date. *See* 80 FR 24041, 24061, 24071. Given that the temporary labor certification process generally begins 75 to 90 days in advance of the employer's start date of work, employer recruitment efforts typically occur between 40 and 60 days before that date with an obligation to provide employment to any qualified U.S. worker who applies until 21 days before the date of need. Therefore, employers with TLCs containing a start date of work on April 1, 2022, for example, likely conducted their positive recruitment beginning around late-January and ending around mid-February 2022, and continued to consider U.S. worker applicants and referrals only until March 11, 2022.

In order to provide U.S. workers a realistic opportunity to pursue jobs for which employers will be seeking foreign workers under this rule, the Departments have determined that if employers file an I–129 petition 30 or more days after their dates of need, they have not conducted recruitment recently enough for the DOL to reasonably conclude that there are currently an insufficient number of U.S. workers who are qualified, willing, and available to perform the work absent taking additional, positive recruitment steps. In previous rules, the Departments had set the point at which new recruitment must be conducted as being when an I–129 petition was filed 45 or more days after the approved date of need. Under this 45-day requirement, recruitment would have concluded 66 or more days prior to the filing of the I–129 petition as employers do not have an obligation to provide employment to U.S. workers 21 days before the start date of need and 45 or more days would have transpired after this date of need. After careful consideration, the Departments have determined that recruitment which concluded 66 or more days (*e.g.,* several months) prior to the filing of a visa petition does not adequately afford workers an opportunity to apply for jobs closer to when they tend to be searching for temporary jobs. Instead, we believe that

a shortened 30-day requirement better aligns with this goal and the 2015 H–2B Interim Final Rule, which found that U.S. applicants applying for temporary positions typically offered by H–2B employers are often not seeking job opportunities, or making informed decisions about such work, several months in advance. *See* 80 FR 24041, 24071.

We also believe this change is in keeping with the intent of the 45-day requirement in the previous TFRs. Those rules have generally published in late May, meaning all visa petitions with an April 1 start date were filed with USCIS more than 45 days after the certified start date of need and additional recruitment would have been required. The economic analysis for this and the two previous TFRs assumed the number of employers that would need to conduct additional recruitment would be equal to the total number of anticipated filers for each TFR. *See* 86 FR 28223, 28224 and 87 FR 4753. The publication of this TFR in early May means this recruitment is limited to petitions that are submitted fewer than 45 days after the certified start date of need. By now requiring additional recruitment be conducted if the visa petition is submitted more than 30 days after the certified start date of need, the intent of the previous rules will be maintained even if the rule is published earlier than previous years. As such, to provide U.S. workers a better opportunity to access available job opportunities, we conclude it is prudent to shorten the time between the certified date of need and the filing of the I–129 visa petition which triggers the additional recruitment requirement.

An employer that files an I–129 petition under 8 CFR 214.2(h)(6)(xii) fewer than 30 days after the certified start date of work on the TLC must submit the TLC and a completed Form ETA–9142B–CAA–6, but is not required to conduct recruitment for U.S. workers beyond the recruitment already conducted as a condition of certification. Only those employers with still-valid TLCs with a start date of work that is 30 or more days before the date they file a petition will be required to conduct recruitment in addition to that conducted prior to being granted labor certification and attest that the recruitment will be conducted, as follows.

Employers that are required to engage in additional recruitment must place a new job order for the job opportunity with the State Workforce Agency (SWA) serving the area of intended employment no later than the next business day after submitting an I–129 petition for H–2B workers to USCIS, and inform the SWA that the job order is being placed in connection with a previously submitted and certified Application for Temporary Employment Certification for H–2B workers by providing the SWA with the unique OFLC TLC case number.

The new job order must contain the job assurances and contents set forth in 20 CFR 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days. The employer must also follow all applicable SWA instructions for posting job orders and receive applications in all forms allowed by the SWA, including online applications. The Departments have concluded that keeping the job order posted for a period of 15 calendar days, during the period the employer is conducting the additional recruitment steps explained below, will effectively ensure U.S. workers are apprised of the job opportunity and are referred for employment, if they are willing, qualified, and available to perform the work. The 15 calendar day period also is consistent with the employer-conducted recruitment activity period applicable under 20 CFR 655.40(b).

Once the SWA places the new job order on its public labor exchange system, the SWA will perform its normal employment service activities by circulating the job order for intrastate clearance, and in interstate clearance by providing a copy of the job order to other SWAs with jurisdiction over listed worksites as well as those States the OFLC CO designated in the original Notice of Acceptance issued under 20 CFR 655.33. Where the occupation or industry is traditionally or customarily unionized, the SWA will also circulate a copy of the new job order to the central office of the State Federation of Labor in the State(s) in which work will be performed, and the office(s) of local union(s) representing workers in the same or substantially equivalent job classification in the area(s) in which work will be performed, consistent with its current obligation under 20 CFR 655.33(b)(5). To facilitate an effective dissemination of these job opportunities, DOL encourages union(s) or hiring halls representing workers in occupations typically used in the H–2B program to proactively contact and establish partnerships with SWAs in order to obtain timely information on available temporary job opportunities. This will aid the SWAs' prompt and effective outreach under the rule. DOL's OFLC maintains a comprehensive directory of contact information for each SWA at *https://www.dol.gov/agencies/eta/foreign-labor/contact.*

The employer also must conduct additional recruitment steps during the period of time the SWA is actively circulating the job order for intrastate clearance. First, the employer must contact, by email or other electronic means, the nearest American Job Center(s) (AJC) serving the area of intended employment where work will commence to request staff assistance to advertise and recruit U.S. workers for the job opportunity. AJCs bring together a variety of programs providing a wide range of employment and training services for U.S. workers, including job search services and assistance for prospective workers and recruitment services for employers through the Wagner-Peyser Program. Therefore, AJCs can offer assistance to employers with recruitment of U.S. workers, and contact with local AJCs will facilitate contemporaneous and effective recruitment activities that can broaden dissemination of the employer's job opportunity through connections with other partner programs within the One-Stop System to locate qualified U.S. workers to fill the employer's labor need. For example, the local AJC, working in concert with the SWA, can coordinate efforts to contact community-based organizations in the geographic area that serve potentially qualified workers or, when a job opportunity is in an occupation or industry that is traditionally or customarily unionized, the local AJC may be better positioned to identify and circulate the job order to appropriate local union(s) or hiring hall(s), consistent with 20 CFR 655.33(b)(5). In addition, as a partner program in the One-Stop System, AJCs are connected with the State's unemployment insurance program, thus an employer's connection with the AJC will help facilitate knowledge of the job opportunity to U.S. workers actively seeking employment. When contacting the AJC(s), the employer must provide staff with the job order number or, if the job order number is unavailable, a copy of the job order.

To increase navigability and to make the process as convenient as possible, DOL offers an online service for employers to locate the nearest local AJC at *https://www.careeronestop.org/* and by selecting the ''Find Local Help'' feature on the main homepage. This feature will navigate the employer to a search function called ''Find an American Job Center'' where the city, state or zip code covering the geographic area where work will commence can be entered. Once entered

and the search function is executed, the online service will return a listing of the name(s) of the AJC(s) serving that geographic area as well as a contact option(s) and an indication as to whether the AJC is a ''comprehensive'' or ''affiliate'' center. Employers must contact the nearest ''comprehensive'' AJC serving the area of intended employment where work will commence or, where a ''comprehensive'' AJC is not available, the nearest ''affiliate'' AJC. A ''comprehensive'' AJC tends to be a large office that offers the full range of employment and business services, and an ''affiliate'' AJC typically is a smaller office that offers a self-service career center, conducts hiring events, and provides workshops or other select employment services for workers. Because a ''comprehensive'' AJC may not be available in many geographic areas, particularly among rural communities, this rule permits employers to contact the nearest ''affiliate'' AJC serving the area of intended employment where a ''comprehensive'' AJC is not available. As explained on the locator website, some AJCs may continue to offer virtual or remote services due to the pandemic with physical office locations temporarily closed for in-person and mail processing services. Therefore, this rule requires that employers utilize available electronic methods for the nearest AJC to meet the contact and disclosure requirements in this rule.

Second, during the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of new 20 CFR 655.65 for intrastate clearance, the employer must make reasonable efforts to contact (by mail or other effective means) its former U.S. workers that it employed in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite) during the period beginning January 1, 2020, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(xii) is submitted. Among the employees the employer must contact are those who have been furloughed or laid off during this period. The employer must disclose to its former employees the terms of the job order, and solicit their return to the job. The contact and disclosures required by this paragraph must be provided in a language understood by the worker, as necessary or reasonable.

Furloughed employees are employees the employer laid off (as the term is defined in 20 CFR 655.5 and 29 CFR 503.4), but the layoff is intended to last for a temporary period of time. This recruitment step will help ensure notice of the job opportunity is disseminated broadly to U.S. workers who were laid off or furloughed during the COVID–19 outbreak and who may be seeking employment as the economy continues to recover and as more people are vaccinated. While this requirement goes beyond the requirement at 20 CFR 655.43, the Departments believe it is appropriate given the evolving conditions of the U.S. labor market, as described above, and the increased likelihood that qualified U.S. workers will make themselves available for these job opportunities.

Third, as the employer was required to do when initially applying for its labor certification, the employer must provide a copy of the job order to the bargaining representative for its employees in the occupation and area of intended employment, consistent with 20 CFR 655.45(a), or if there is no bargaining representative, post the job order in the places and manner described in 20 CFR 655.45(b).

When a job is in a traditionally or customarily unionized occupation or industry and during the time the SWA is actively circulating the job order, the employer must affirmatively contact the nearest American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) office covering the area of intended employment to provide written notice of the job opportunity and request assistance in recruiting qualified U.S. workers who may be interested in applying for the job opportunity. The employer must provide the AFL–CIO office (by mail, email, or other effective written means) a copy of the job order placed with the SWA. To determine which occupations are traditionally or customarily unionized, and to obtain information about the proper AFL–CIO office to contact,[112] employers should search the resources available on the OFLC website, under the ''Customarily Unionized H–2B Occupations'' tab on the lefthand side of the OFLC homepage: *https://www.dol.gov/agencies/eta/foreign-labor.*[113]

When applicable, the employer must include information in its recruitment report confirming that the AFL–CIO office was contacted and notified in writing of the job opportunity or opportunities. In the recruitment report, the employer must state whether the nearest AFL–CIO office referred qualified U.S. worker(s), including the number of referrals, or indicate that it was non-responsive to the employer's requests. The employer must retain all documentation establishing that it has contacted the AFL–CIO office and submit all such information upon request from the Departments. Documentation or evidence that would help employers establish that the appropriate AFL–CIO office was contacted, may include, but is not limited to: Documentation proving the job order was shipped and delivered to the AFL–CIO office (*e.g.,* copy of the job order along with the certificate of shipment provided by the U.S. Postal Service or other courier mail or parcel delivery services and/or any other form of delivery confirmation); evidence confirming that the job order, along with a request for assistance to recruit workers, was in fact emailed to the appropriate AFL–CIO office (*e.g.,* copies of emails); phone records accompanied by proof of a follow-up email sending the job order to the appropriate AFL–CIO office; or copies of any correspondence exchanged (*e.g.,* letter, email) between the employer and the AFL–CIO office regarding worker referrals.

We believe the requirement that employers contact the AFL–CIO in occupations or industries that are traditionally or customarily unionized will complement the requirement that SWAs circulate the job order to the State Federation of Labor and local unions in such situations, thereby increasing the likelihood that a U.S. worker will be recruited for the job opportunity. This is because in traditionally or customarily unionized industries and occupations,

[112] The Departments have determined that the requirement for employers to contact the nearest AFL–CIO office properly balances the goal of increasing U.S. worker outreach in those H–2B job opportunities that are in traditionally or customarily unionized occupations, while still providing employers with necessary guidance on recruitment requirements. The AFL–CIO is a voluntary federation of 57 national and international labor unions covering a substantial number of union employees. AFL–CIO, About Us, *https://aflcio.org/about-us* (last visited Apr. 21, 2022). The H–2B job opportunities in traditionally or customarily unionized occupations most frequentlyfall within those industries most likely to be organized or represented by AFL–CIO member unions.

[113] These resources were developed based on recent information received from stakeholders indicating that collective bargaining agreements now exist in certain occupations, such as landscaping. In addition, the occupations or industries listed are ones in which the Department has typically observed substantial union presence in its program administration experience, such as occupations involved in public sector employment, construction and extraction activities, and service related industries, where historical Bureau of Labor Statistics data has demonstrated a presence of union affiliated workers. *See* BLS, Economic News Release, Table 3. Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry (Jan. 20, 2022), *https://www.bls.gov/news.release/union2.t03.htm.*

unions serve as an essential conduit for communications between U.S. workers and hiring employers and have traditionally been recognized as a reliable source of referrals of U.S. workers. Unionized applicants may additionally share information about the job opportunity with nonunionized applicants, resulting in more referrals of qualified applicants to the job opportunity. Within this context, the two requirements complement each other as the State Federations of Labor and local unions that SWAs would circulate relevant job orders to, based on their knowledge of the local labor market, are comprised of various union organizations and may not always include the AFL–CIO. Since H–2B job opportunities in traditionally or customarily unionized occupations tend to fall within those industries most likely to be organized or represented by AFL–CIO member untions, the new requirement increases outreach to qualified U.S. workers. Moreover, the new requirement offers a chance for hiring employers to directly contact a potential pool of U.S. workers who are qualified and interested in the job opportunity, which can strengthen the probability that employers will locate U.S. workers suited for the job opportunity. For example, potential U.S. workers may be more inclined to contact an employer directly upon learning of the job opportunity rather than utilize the SWA as an intermediary since the application process could be quicker and demonstrate a willingness by employers to consider union workers. Direct contact between employers and unions may also initiate a dialogue between employers and unions that could lead to a future working relationship that fulfills the workforce needs of employers. Therefore, in providing timely and meaningful notice of job opportunities in traditionally or customarily unionized industries to the AFL–CIO, employers build on efforts by SWAs to circulate job orders to state and local unions, which may differ from the AFL–CIO, and thus broaden the scope of their U.S. worker outreach.

The requirements to contact former U.S. workers and provide notice to the bargaining representative or post the job order must be conducted in a language understood by the workers, as necessary or reasonable. This requirement would apply, for example, in situations where an employer has one or more employees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. This requirement would allow those workers to make informed decisions regarding the job opportunity, and is a reasonable interpretation of the recruitment requirements in 20 CFR part 655, subpart A, in light of the need to ensure that the test of the U.S. labor market is as comprehensive as possible. Consistent with existing language requirements in the H–2B program under 20 CFR 655.20(l), DOL intends to broadly interpret the necessary or reasonable qualification, and apply an exemption only in those situations where having the job order translated into a particular language would both place an undue burden on an employer and not significantly disadvantage the employee.

The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date on which the SWA job order is posted, whichever is later. Additionally, consistent with 20 CFR 655.40(a), applicants may be rejected only for lawful job-related reasons. Given that the employer, SWA, and AJC(s) will be actively engaged in conducting recruitment and broader dissemination of the job opportunity during the period of time the job order is active, this requirement provides an adequate period of time for U.S. workers to contact the employer or SWA for referral to the employer and completion of the additional recruitment steps described above. As explained above, the Departments have determined that if employers file a petition 30 or more days after their dates of need, they have not conducted recruitment recently enough for the Departments to reasonably conclude that there are currently an insufficient number of U.S. workers qualified, willing, and available to perform the work absent additional recruitment.

Because of the abbreviated timeline for the additional recruitment required for employers whose initial recruitment has gone stale, the Departments have determined that a longer hiring period is necessary to approximate the hiring period under normal recruitment procedures and ensure that domestic workers have access to these job opportunities, consistent with the Departments' mandate. Additionally, given the relatively brief period during which additional recruitment will occur, additional time may be necessary for U.S. workers to have a meaningful opportunity to learn about the job opportunities and submit applications.

The Departments remind all H–2B employers of the requirement to engage in non-discriminatory hiring practices and that the job opportunity is, and through the recruitment period set forth in this rule must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship, as specified under 20 CFR 655.20(r). Further, employers that wish to require interviews must conduct those interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. Employers cannot provide potential H–2B workers with more favorable treatment with respect to the requirement for, and conduct of, interviews. *See* 20 CFR 655.40(d).

Any U.S. worker who applies or is referred for the job opportunity and is not considered by the employer for the job opportunity, experiences difficulty accessing or understanding the materials terms and conditions of the job opportunity, or believes they have been improperly rejected by the employer may file a complaint directly with the SWA serving the area of intended employment. Each SWA maintains a complaint system for public labor exchange services established under 20 CFR part 658, subpart E, and any complaint filed by, or on behalf of, a U.S. worker about a specific H–2B job order will be processed under this existing complaint system. Depending on the circumstances, the SWA may seek informal resolution by working with the complainant and the employer to resolve, for example, miscommunications with the employer to be considered for the job opportunity or other concerns or misunderstandings related to the terms and conditions of the job opportunity. In other circumstances, such as allegations involving discriminatory hiring practices, the SWA may need to formally enter the complaint and refer the matter to an appropriate enforcement agency for prompt action. As mentioned above, DOL's OFLC maintains a comprehensive directory of contact information for each SWA that can be used to obtain more information on how to file a complaint.

Although the hiring period may require some employers to hire U.S. workers after the start of the contract period, this is not unprecedented. For example, in the H–2A program, employers have been required to hire U.S. workers through 50 percent of the contract period since at least 2010, which ''enhance[s] protections for U.S. workers, to the maximum extent possible, while balancing the potential

costs to employers,'' and is consistent with the Departments' responsibility to ensure that these job opportunities are available to U.S. workers. The Department acknowledges that hiring workers after the start of the contract period imposes an additional cost on employers, but that cost can be lessened, in part, by the ability to discharge the H–2B worker upon hiring a U.S. worker (note, however, that an employer must pay for any discharged H–2B worker's return transportation, 20 CFR 655.20(j)(1)(ii) and 29 CFR 503.16(j)(1)(ii)). Additionally, this rule permits employers to immediately hire H–2B workers who are already present in the United States without waiting for approval of an H–2B petition, which will reduce the potential for harm to H–2B workers as a result of displacement by U.S. workers. *See* new 8 CFR 214.2(h)(28). Most importantly, a longer hiring period will ensure that available U.S. workers have a viable opportunity to apply for H–2B job opportunities. Accordingly, the Departments have determined that in affording the benefits of this temporary cap increase to businesses that are suffering irreparable harm or will suffer impending irreparable harm, it is necessary to ensure U.S. workers who may be seeking employment as the economy continues to recover in 2022 have sufficient time to apply for these jobs.

As in the temporary rules implementing the supplemental cap increases in prior years, employers must retain documentation demonstrating compliance with the recruitment requirements described above, including placement of a new job order with the SWA, contact with AJCs, contact with the bargaining representative or AFL–CIO when required, contact with former U.S. workers, and compliance with § 655.45(a) or (b). Employers must prepare and retain a recruitment report that describes these efforts and meets the requirements set forth in 20 CFR 655.48, including the requirement to update the recruitment report throughout the recruitment and hiring period set forth in paragraph (a)(5)(v) of new 20 CFR 655.65. Employers must maintain copies of the recruitment report, attestation, and supporting documentation, as described above, for a period of 3 years from the date that the TLC was approved, consistent with the document retention requirements under 20 CFR 655.56. These requirements are similar to those that apply to certain seafood employers that stagger the entry of H–2B workers under 20 CFR 655.15(f).

DOL's WHD has the authority to investigate the employer's attestations, as the attestations are a required part of the H–2B petition process under this rule and the attestations rely on the employer's existing, approved TLC. Where a WHD investigation determines that there has been a willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations, WHD may institute administrative proceedings to impose sanctions and remedies, including (but not limited to) assessment of civil money penalties; recovery of wages due; make-whole relief for any U.S. worker who has been improperly rejected for employment, laid off, or displaced; make-whole relief for any person who has been discriminated against; and/or debarment for 1 to 5 years. *See* 29 CFR 503.19, 503.20. This regulatory authority is consistent with WHD's existing enforcement authority and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.66, the petitioner must retain documents and records evidencing compliance with this rule, and must provide the documents and records upon request by DHS or DOL. In addition to the complaint process under 20 CFR part 658, subpart E, which is described above, workers who believe their rights under the H–2B program have been violated may file confidential complaints with WHD by telephone at 1–866–487–9243 or may access the telephone number via TTY by calling 1–877–889–5627 or visit *https://www.dol.gov/agencies/whd* to locate the nearest WHD office for assistance. Note that an employer is prohibited from intimidating, threatening, restraining, coercing, blacklisting, discharging, or in any manner discriminating against an employee who has, among other actions: Filed a complaint related to H–2B rights and protections; consulted with a workers' rights center, community organization, labor union, legal assistance program, or attorney on H–2B rights or protections; or exercised or asserted H–2B rights and protections on behalf of themselves or others. 20 CFR 655.20(n) and 29 CFR 503.16(n).

DHS has the authority to verify any information submitted to establish H–2B eligibility at any time before or after the petition has been adjudicated by USCIS. *See, e.g.,* INA sections 103 and 214 (8 U.S.C. 1103, 1184); *see also* 8 CFR part 103 and section 214.2(h). DHS' verification methods may include, but are not limited to, review of public records and information, contact via written correspondence or telephone, unannounced physical site inspections, and interviews. USCIS will use information obtained through verification to determine H–2B eligibility and assess compliance with the requirements of the H–2B program. Subject to the exceptions described in 8 CFR 103.2(b)(16), USCIS will provide petitioners with an opportunity to address adverse information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on a petition or after the agency has initiated an adverse action that may result in revocation or termination of an approval.

DOL's OFLC already has the authority under 20 CFR 655.70 to conduct audit examinations on adjudicated Applications for Temporary Employment Certification, including all appropriate appendices, and verify any information supporting the employer's attestations. OFLC uses audits of adjudicated Applications for Temporary Employment Certification, as authorized by 20 CFR 655.70, to ensure employer compliance with attestations made in its Application for Temporary Employment Certification and to ensure the employer has met all statutory and regulatory criteria and satisfied all program requirements. The OFLC CO has sole discretion to choose which Applications for Temporary Employment Certification will be audited. *See* 20 CFR 655.70(a). Post-adjudication audits can be used to establish a record of employer compliance or non-compliance with program requirements and the information gathered during the audit assists DOL in determining whether it needs to further investigate or debar an employer or its agent or attorney from future labor certifications.

Under this rule, an employer may submit a petition to USCIS, including a valid TLC and Form ETA–9142B–CAA–6, in which the employer attests to compliance with requirements for access to the supplemental H–2B visas allocated through 8 CFR 214.2(h)(6)(xii), including that its business is suffering irreparable harm or will suffer impending irreparable harm, and that it will conduct additional recruitment, if necessary to refresh the TLC's labor market test. DHS and DOL consider Form ETA–9142B–CAA–6 to be an appendix to the Application for Temporary Employment Certification and the attestations contained on the Form ETA–9142B–CAA–6 and documentation supporting the attestations to be evidence that is incorporated into and a part of the approved TLC. Therefore, DOL's audit authority includes the authority to audit

the veracity of any attestations made on Form ETA–9142B–CAA–6 and documentation supporting the attestations. However, DOL's audit authority is independently authorized, and is not limited by the expiration date of this rule. In order to make certain that the supplemental visa allocation is not subject to fraud or abuse, DHS will share information regarding Forms ETA–9142B–CAA–6 with DOL, consistent with existing authorities. This information sharing between DHS and DOL, along with relevant information that may be obtained through the separate SWA and WHD complaint systems, are expected to support DOL's identification of TLCs used to access the supplemental visa allocation for closer examination of TLCs through the audit process.

In accordance with the documentation retention requirements in this rule, the petitioner must retain documents and records proving compliance with this rule, and must provide the documents and records upon request by DHS or DOL. Under this rule, DOL will audit a significant number of TLCs used to access the supplemental visa allocation to ensure employer compliance with attestations, including those regarding the irreparable harm standard and additional employer conducted recruitment, required under this rule. In the event of an audit, the OFLC CO will send a letter to the employer and, if appropriate, a copy of the letter to the employer's attorney or agent, listing the documentation the employer must submit and the date by which the documentation must be sent to the CO. During audits under this rule, the CO will request documentation necessary to demonstrate the employer conducted all recruitment steps required under this rule and truthfully attested to the irreparable harm the employer was suffering or would suffer in the near future without the ability to employ all of the H–2B workers requested under the cap increase, including documentation the employer is required to retain under this rule. If necessary to complete the audit, the CO may request supplemental information and/or documentation from the employer during the course of the audit process. 20 CFR 655.70(c).

Failure to comply in the audit process may result in the revocation of the employer's certification or in debarment, under 20 CFR 655.72 and 655.73, respectively, or require the employer to undergo assisted recruitment in future filings of an Application for Temporary Employment Certification, under 20 CFR 655.71. Where an audit examination or review of information from DHS or other appropriate agencies determines that there has been fraud or willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations or failure to comply with the audit examination process, OFLC may institute appropriate administrative proceedings to impose sanctions on the employer. Those sanctions may result in revocation of an approved TLC, the requirement that the employer undergo assisted recruitment in future filings of an Application for Temporary Employment Certification for a period of up to 2 years, and/or debarment from the H–2B program and any other foreign labor certification program administered by DOL for 1 to 5 years. *See* 29 CFR 655.71, 655.72, 655.73. Additionally, OFLC has the authority to provide any finding made or documents received during the course of conducting an audit examination to DHS, WHD, IER, or other enforcement agencies. OFLC's existing audit authority is independently authorized, and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.66, the petitioner must retain documents and records proving compliance with this rule, and must provide the documents and records upon request by DHS or DOL.

Petitioners must also comply with any other applicable laws, such as avoiding unlawful discrimination against U.S. workers based on their citizenship status or national origin. Specifically, the failure to recruit and hire qualified and available U.S. workers on account of such individuals' national origin or citizenship status may violate INA section 274B, 8 U.S.C. 1324b.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act (APA). 5 U.S.C. 553(b) and (d).

1. Good Cause To Forgo Notice and Comment Rulemaking

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Among other things, the good cause exception for forgoing notice and comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good-cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir. 1992), the Departments have appropriately invoked the exception in this case, for the reasons set forth below.

With respect to the supplemental allocations provisions in 8 CFR 214.2 and 20 CFR part 655, subpart A, as explained above, the Departments are acting to give effect to the supplemental cap authority in *section 204 of Division O of the FY 2022 Omnibus,* which was authorized only on March 15, 2022, and expires in less than five months on September 30, 2022.[114] The Departments are bypassing advance notice and comment because of the exigency that created the new enactment, including the timeframe for action, as well as to urgently address increased labor demand [115] and other conditions stemming from the economic consequences of the ongoing pandemic. A characteristic of the pandemic, the ''Great Resignation'' has resulted in an adverse impact on many employers in industries that frequently use the H–2B program,[116] and recent reports suggest

[114] *See* Consolidated Appropriations Act, 2022, Division O, section 204. Public Law 117–103 (Mar. 15, 2022).

[115] Irina Ivanova, *America's labor shortage is actually an immigrant shortage,* CBS News, *https://www.cbsnews.com/news/immigration-jobs-workers-labor-shortage/* (Apr. 8, 2022). (''U.S. employers say it's a hard time to find and keep talent. Workers are decamping at near-record rates, while millions of open jobs go unfilled. One reason for this labor crunch that has largely flown beneath the radar: Immigration to the U.S. is plummeting, a shift with potentially enormous long-term implications for the job market.'')

[116] *See* Megan Leonhardt, *The Great Resignation is hitting these industries hardest,* Fortune, *https://fortune.com/2021/11/16/great-resignation-hitting-these-industries-hardest/* (Nov. 16, 2021) (''The industries hit hardest by quits in September are leisure and hospitality—including those who work in the arts and entertainment, as well as in restaurants and hotels—trade, transportation and utilities, professional services and retail.''). These observations made in the preceding source align with USCIS analysis of labor demand in industry sectors that are most represented in the H–2B program, as discussed in the E.O. 12866 analysis. *See also, e.g.,* Paul Krugman, *Wonking Out: Is the Great Resignation a Great Rethink?,* N.Y. Times, *https://www.nytimes.com/2021/11/05/opinion/great-resignation-quit-job.html* (Nov. 5, 2021) (''. . . there's considerable evidence that 'workers at low-wage jobs [have] historically underestimated how bad their jobs are.' When something—like, say, a deadly pandemic—forces them out of their rut, they realize what they've been putting up with. And because they can learn from the experience of other workers, there may be a 'quits multiplier' in which the decision of some workers to quit ends up inducing other workers to follow suit.'').

that this trend is continuing in 2022.[117] Furthermore, the pandemic has had an impact on inflation [118] and supply chains.[119] The war in Ukraine, has further strained the U.S. economy; U.S. Treasury Secretary Janet Yellen warned on April 6, 2022 about the economic shock waves set off by the war in Ukraine, including disruptions to the global flow of food and energy.[120]

USCIS received more than enough petitions to meet the H–2B visa statutory cap for the first half of FY 2022 on September 30, 2021,[121] which is a month and a half earlier than when the statutory cap for the first half of FY 2020 was reached.[122] Similarly, on February 25, 2022, USCIS received sufficient petitions to meet the H–2B visa statutory cap for the second half of FY 2022. As discussed elsewhere in this preamble, DHS and DOL issued a temporary final rule to address the unmet needs of American businesses on January 28, 2022.[123] Given the continued high demand of American businesses for H–2B workers, rapidly evolving economic conditions and increased labor demand, and the limited time remaining in the fiscal year to authorize additional visa numbers to help prevent further irreparable harm currently experienced by some U.S. employers or avoid impending economic harm for others,[124] a decision to undertake notice and comment rulemaking would delay final action on this matter by months, and would, therefore, greatly complicate and potentially preclude the Departments from successfully exercising the authority created by section 204, Public Law 117–103.

The temporary portability and change of employer provisions in 8 CFR 214.2 and 274a.12 are further supported by conditions created by the COVID–19 pandemic. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act in response to COVID–19 retroactive to January 27, 2020.[125] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed several times: On April 21, 2020, on July 23, 2020, on October 2, 2020, January 7, 2021, on April 15, 2021, on July 19, 2021, on October 15, 2021, on January 14, 2022, and most recently, on April 12, 2022.[126] On March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak, retroactive to March 1, 2020, to control the spread of the virus in the United States.[127] In response to the Mexican government's call to increase social distancing in that country, DOS announced the temporary suspension of routine immigrant and nonimmigrant visa services processed at the U.S. Embassy in Mexico City and all U.S. consulates in Mexico beginning on March 18, 2020, and it later expanded the temporary suspension of routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates.[128] On July 22, 2020, DOS indicated that embassies and consulates should continue to provide emergency and mission critical visa services to the extent possible and could begin a phased resumption of routine visa services as local conditions and resources allow.[129] On March 26, 2020 DOS designated the H–2 programs as essential to the economy and food security of the United States and a national security priority; DOS indicated that U.S. Embassies and Consulates will continue to process H–2 cases to the extent possible and implemented a change in its procedures, to include interview waivers.[130] On November 19, 2021, the Bureau of Consular Affairs announced that it would focus on reducing wait times for all consular services at U.S. embassies and consulates overseas while also protecting the health and safety of government staff and applicants but noted that local conditions and restrictions at individual consular posts may continue to fluctuate. The Bureau noted that embassies and consulates have broad discretion to determine how to prioritize visa appointments among the range of visa classes as safely as

[117] *See* Greg Iacurci, *The Great Resignation continues, as 44% of workers look for a new job,* CNBC, *https://www.cnbc.com/2022/03/22/great-resignation-continues-as-44percent-of-workers-seek-a-new-job.html* (Mar 22, 2022) (''Almost half of employees are looking for a new job or plan to soon, according to a survey, suggesting the pandemic-era phenomenon known as the Great Resignation is continuing into 2022. To that point, 44% of employees are ''job seekers,'' according to Willis Towers Watson's 2022 Global Benefits Attitudes Survey. Of them, 33% are active job hunters who looked for new work in the fourth quarter of 2021, and 11% planned to look in the first quarter of 2022.'').

[118] On April 12, 2022, BLS reported that the CPI–U increased 1.2 percent in March on a seasonally adjusted basis after rising .8 percent in February. Over the previous 12 months, the all items index increased 8.5 percent before seasonal adjustment. *See* BLS, Economic News Release, Consumer Price Index Summary (Apr. 12, 2022), *https://www.bls.gov/news.release/archives/cpi_04122022.htm.*

[119] *See, e.g.,* Mitchell Hartman, *Omicron's impact on inflation and supply chains is uncertain,* Marketplace, *https://www.marketplace.org/2021/12/01/omicrons-impact-on-inflation-and-supply-chains-is-uncertain/* (Dec. 1, 2021) (''People have trouble getting to work through lockdowns and what have you, and labor gets scarcer—particularly for those jobs where being present at work matters. Supply goes down and has an upward pressure on pricing . . .''); Alyssa Fowers & Rachel Siegel, *Five charts explaining why inflation is at a near 40-year high,* Wash. Post, *https://www.washingtonpost.com/business/2021/10/14/inflation-prices-supply-chain/* (Oct. 14, 2021, last updated Dec. 10, 2021) (''Prices for meat, poultry, fish and eggs have surged in particular above other grocery categories. The White House has pointed to broad consolidation in the meat industry, saying that large companies bear some of the responsibility for pushing prices higher. . . Meat industry groups disagree, arguing that the same supply-side issues rampant in the rest of the economy apply to proteins because it costs more to transport and package materials, while tight labor market has held back meat production.'').

[120] Anneken Tappe and Matt Egan, *Janet Yellen warns of 'enormous' economic repercussions from war in Ukraine,* CNN Business, *https://www.cnn.com/2022/04/06/economy/treasury-yellen-economic-impact-ukraine/index.html* (Apr. 6, 2022)

[121] USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2022, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022* (Oct. 12, 2021).

[122] November 16, 2020 was the last receipt date for the first half of FY 2020. *See* USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2021, https://www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021* (Nov. 18, 2020).

[123] Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers, 87 FR 4722, (Jan. 28, 2022).

[124] *See* Jason Douglas et al., *Omicron Disrupts Government Plans to Lure Migrant Workers as Labor Shortages Bite,* Wall Street Journal, *https://www.wsj.com/articles/omicron-disrupts-government-plans-to-lure-migrant-workers-as-labor-shortages-bite-11639132203* (Dec. 10, 2021) (' 'I've lost customers because people don't have the patience to wait—it's horrible, horrible,'' she said. ''The sad part is, if I got my workers, my business would grow exponentially.' . . . Ms. Ogden has tried to find locals to fill the jobs. She even asked her congressman to put a sign in his office. She offered about $18 an hour, plus overtime. No one took a job. Congress raised the cap for H–2B visas this year, up to a total of 66,000 for fiscal 2022, but that still falls far short of demand.'').

[125] *See* HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020). *See also, https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx* (Jan. 31, 2020).

[126] *See* HHS, *Renewal of Determination That A Public Health Emergency Exists, https://aspr.hhs.gov/legal/PHE/Pages/COVID19-12Apr2022.aspx* (Apr. 12, 2022).

[127] President of the United States, Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

[128] DOS, *Suspension of Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated July 22, 2020).

[129] *https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html.*

[130] DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

possible, subject to local conditions and restrictions.[131]

Travel restrictions have also changed over time as the pandemic has continued to evolve. On October 25, 2021, the President issued Proclamation 10294, *Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic,* which, together with other policies, advance the safety and security of the air traveling public and others, while also allowing the domestic and global economy to continue its recovery from the effects of the COVID–19 pandemic. The proclamation bars the entry of noncitizen adult nonimmigrants into the United States via air transportation unless they are fully vaccinated against COVID–19, with certain exceptions.[132] On January 22, 2022, similar requirements entered into force at land ports of entry and ferry terminals.[133]

On November 26, 2021, the President issued another Proclamation suspending the entry into the United States, of immigrants or nonimmigrants, of noncitizens who were physically present within certain Southern African countries during the 14-day period preceding their entry or attempted entry into the United States.[134] On December 28, 2021, the President revoked the November 26 Proclamation.[135] And on December 2, 2021, CDC announced that, beginning December 6, 2021, all air travelers over the age of two, regardless of citizenship or vaccination status, will be to be required to show a negative pre-departure COVID–19 viral test taken the day before they board their flight to the United States, or documentation of recent recovery from COVID–19.[136] Shifting requirements as well as varying availability of vaccines and tests in some H–2B nonimmigrants' home countries could complicate travel.

In addition to travel restrictions and impacts of the pandemic on visa services, as discussed elsewhere in this rule, current efforts to curb the pandemic in the United States and worldwide have been partially successful. DHS anticipates that H–2B employers may need additional flexibilities, beyond supplemental visa numbers, to meet all of their labor needs, particularly if some U.S. and H–2B workers become unavailable due to illness or other restrictions related to the spread of COVID–19. Therefore, DHS is acting expeditiously to temporarily allow job portability for H–2B workers that will facilitate the continued employment of H–2B workers already present in the United States. This action will help employers fill these critically necessary nonagricultural job openings and protect U.S. businesses' economic investments in their operations.

Courts have found ''good cause'' under the APA when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. Courts have held that an agency may use the good cause exception to address ''a serious threat to the financial stability of [a government] benefit program,'' *Nat'l Fed'n of Fed. Emps.* v. *Devine,* 671 F.2d 607, 611 (D.C. Cir. 1982), or to avoid ''economic harm and disruption'' to a given industry, which would likely result in higher consumer prices, *Am. Fed'n of Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981).

Consistent with the above authorities, the Departments are bypassing notice and comment to prevent ''serious economic harm to the H–2B community,'' including U.S. employers, associated U.S. workers, and related professional associations, that could result from ongoing uncertainty over the status of the numerical limitation, in other words, the effective termination of the program through the remainder of FY 2022. *See Bayou Lawn & Landscape Servs.* v. *Johnson,* 173 F. Supp. 3d 1271, 1285 & n.12 (N.D. Fla. 2016). The Departments note that this action is temporary in nature, *see id.,*[137] and includes appropriate conditions to ensure that it affects only those businesses most in need, and also protects H–2B and U.S. workers.

2. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good cause exception to the 30-day effective date requirement is easier to meet than the good cause exception for foregoing notice and comment rulemaking. *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v. *Gavrilovic,* 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above expressing the need for immediate action, we also conclude that the Departments have good cause to dispense with the 30-day effective date requirement.

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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary and to the extent permitted by law, to proceed only if the benefits justify the costs and to select the regulatory approach that maximizes net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits; reducing costs; simplifying and harmonizing rules; and promoting flexibility through approaches that preserve freedom of choice (including through ''provision of information in a form that is clear and intelligible''). It also allows consideration of equity, fairness, distributive impacts, and human dignity, even if some or all of these are difficult or impossible to quantify.

The Office of Information and Regulatory Affairs has determined that this rule is a ''significant regulatory action,'' although not an economically significant regulatory action. Accordingly, the Office of Management and Budget has reviewed this regulation.

[131] DOS, *Visa Services Operating Status Update, https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html* (Apr. 8, 2022).

[132] *See* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

[133] *See* 87 FR 3425 (Jan. 24, 2022) (restrictions at United States-Mexico border); 87 FR 3429 (Jan. 24, 2022) (restrictions at United States-Canada border).

[134] *See* A Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019 (Nov. 26, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/26/a-proclamation-on-suspension-of-entry-as-immigrants-and-nonimmigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease-2019/.*

[135] *See* A Proclamation on Revoking Proclamation 10315 (Dec. 28, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/28/a-proclamation-on-revoking-proclamation-10315/.*

[136] *See* CDC, Requirement for Proof of Negative COVID–19 Test or Documentation of Recovery from COVID–19 (Dec. 2, 2021), published in the **Federal Register** at 86 FR 69256 on December 7, 2021.

[137] Because the Departments have issued this rule as a temporary final rule, the supplemental cap portion of this rule—with the sole exception of the document retention requirements—will be of no effect after September 30, 2022. The ability to initiate emnployment with a new employer pursuant to the portability provisions of this rule expires at the end of on January 24, 2023.

1. Summary

With this temporary final rule (TFR), DHS is authorizing the immediate release of an additional 35,000 H–2B visas. By the authority given under section 204 of the Consolidated Appropriations Act, 2022, Public Law 117–103 (FY 2022 Omnibus), DHS is raising the H–2B cap by an additional 35,000 visas during FY 2022 for positions with start dates on or after April 1, 2022 through September 30, 2022 to businesses that: (1) Show that there are an insufficient number of U.S. workers to meet their needs in the second half of FY 2022; (2) attest that their businesses are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition; and (3) petition for returning workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti. Additionally, up to 11,500 of the 35,000 visas may be granted to workers from the Northern Central American countries and Haiti who are exempt from the returning worker requirement. This TFR aims to prevent irreparable harm to certain U.S. businesses by allowing them to hire additional H–2B workers within FY 2022.

The estimated total costs to petitioners range from $22,107,261 to $24,255,601. This includes $12,702,940 in filing fees which are also transfers from the petitioners to USCIS to cover the full costs to USCIS related to new petitions. The estimated total cost to the Federal Government is $333,774. Therefore, DHS estimates that the total cost of this rule ranges from $22,441,035 to $24,589,375. The benefits of this rule are diverse, though some of them are difficult to quantify. They include:

(1) Employers benefit from this rule significantly through increased access to H–2B workers;

(2) Customers and others benefit directly or indirectly from that increased access;

(3) H–2B workers benefit from this rule significantly through obtaining jobs and earning wages, potential ability to port and earn additional wages, and increased information on COVID–19 and vaccination distribution. DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States; [138]

(4) Some American workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H–2B workers were available;

(5) The existence of a lawful pathway, for the 11,500 visas set aside for new workers from Guatemala, Honduras, El Salvador, and Haiti, is likely to provide multiple benefits in terms of U.S. policy with respect to the Northern Central American countries and Haiti; and

(6) The Federal Government benefits from increased evidence regarding attestations. Table 1 provides a summary of the provisions in this rule and some of their impacts.

TABLE 1—SUMMARY OF THE TFR'S PROVISIONS AND ECONOMIC IMPACT

Current provision	Changes resulting from the provisions of the TFR	Expected costs of the provisions of the TFR	Expected benefits of the provisions of the TFR
—The current statutory cap limits H–2B visa allocations to 66,000 workers a year.	—The amended provisions will allow for an additional 35,000 H–2B temporary workers. Up to 11,500 of the 35,000 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti and will be exempt from the returning worker requirement.	—The total estimated cost to file Form I–129 by human resource specialists is approximately $2,886,332. The total estimated cost to file Form I–129 and Form G–28 will range from approximately $3,214,372 if filed by in-house lawyers to approximately $4,304,801 if filed by outsourced lawyers. The total estimated cost associated with filing additional petitions ranges from $6,100,704 to $7,191,133 depending on the filer. —The total estimated costs associated with filing Form I–907 if it is filed with Form I–129 is $5,015,304 if filed by human resource specialists. The total estimated costs associated with filing Form I–907 would range from approximately $4,094,253 if filed by an in-house lawyer to approximately $4,208,844 if filed by an outsourced lawyer. The total estimated costs associated with requesting premium processing ranges from approximately $9,109,557 to approximately $9,224,148. —The estimated total costs to petitioners range from $22,107,261 to $24,255,601. This includes $12,702,940 in filing fees which are also transfers from the petitioners to USCIS to cover the full to USCIS related to new petitions. —Included in these costs are $3,845,440 in filing fees associated with Form I–129 H–2B petitions and $8,857,500 in filing fees associated with premium processing requests.	—Form I–129 petitioners would be able to hire temporary workers needed to prevent their businesses from suffering irreparable harm. —Businesses that are dependent on the success of other businesses that are dependent on H–2B workers would be protected from the repercussions of local business failures. —Some American workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H–2B workers were available.

[138] *See, e.g.,* Arnold Brodbeck et al., Seasonal Migrant Labor in the Forest Industry of the Southeastern United States: The Impact of H–2B Employment on Guatemalan Livelihoods, 31 Society and Natural Resources 1012 (2018).

TABLE 1—SUMMARY OF THE TFR'S PROVISIONS AND ECONOMIC IMPACT—Continued

Current provision	Changes resulting from the provisions of the TFR	Expected costs of the provisions of the TFR	Expected benefits of the provisions of the TFR
	—Petitioners will be required to fill out the newly created Form ETA–9142–B–CAA–6, Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Div. O of the Consolidated Appropriations Act, 2021.	—The total estimated cost to petitioners to complete and file Form ETA–9142–B–CAA–6 is approximately $2,574,553.	—Form ETA–9142–B–CAA–6 will serve as initial evidence to DHS that the petitioner meets the irreparable harm standard and returning worker requirements.
	—Petitioners would be required to conduct an additional round of recruitment.	—The total estimated cost to petitioners to conduct an additional round of recruitment is approximately $932,362.	—The additional round of recruitment will ensure that a U.S. worker that is willing and able to fill the position is not replaced by a nonimmigrant worker.
	—An H–2B nonimmigrant who is physically present in the United States may port to another employer.	—The total estimated cost to file Form I–129 by human resource specialists is approximately $249,660. The total estimated cost to file Form I–129 and Form G–28 will range from approximately $277,714 if filed by in-house lawyers to approximately $371,925 if filed by outsourced lawyers. —The total estimated costs associated with filing Form I–907 if it is filed with Form I–129 is $434,120 if filed by human resource specialists. The total estimated costs associated with filing Form I–907 would range from approximately $354,190 if filed by an in-house lawyer to approximately $364,103 if filed by an outsourced lawyer. —The total estimated costs associated with the portability provision ranges from $1,315,684 to $1,419,808, depending on the filer. —DHS may incur some additional adjudication costs as more petitioners file Form I–129. However, these additional costs to USCIS are expected to be covered by the fees paid for filing the form, which have been accounted for in costs to petitioners.	—H–2B workers present in the United States will be able to port to another employer and potentially extend their stay and, therefore, earn additional wages. —An H–2B worker with an employer that is not complying with H–2B program requirements would have additional flexibility in porting to another employer's certified position. —This provision would ensure employers will be able to hire the H–2B workers they need.
	—Employers of H–2B workers would be required to provide information about equal access to COVID–19 vaccines and vaccination distribution sites.	—The total estimated cost to petitioners to provide COVID–19 vaccines and vaccination distribution site information is approximately $1,891.	—Workers would be given information about equal access to vaccines and vaccination distribution.
	—DHS and DOL intend to conduct several audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule.	—Employers will have to comply with audits for an estimated total opportunity cost of time of $207,060. —It is expected both DHS and DOL will be able to shift resources to be able to conduct these audits without incurring additional costs. However, the Departments will incur opportunity costs of time. The audits are expected to take a total of approximately 4,200 hours and cost approximately $333,774.	—DOL and DHS audits will yield evidence of the efficacy of attestations in enforcing compliance with H–2B supplemental cap requirements. —Conducting a significant number of audits will discourage uncorroborated attestations.
Additional Scrutiny	—Some petitioners will provide additional evidence.	—Some employers will need to print and ship additional evidence to USCIS. The estimated costs to comply with additional evidentiary requirements is $19,375.	—Additional scrutiny of employers with past H–2B program violations are aimed at ensuring compliance with program requirements, reducing harms to both U.S. workers and H–2B workers.
Familiarization Cost	—Petitioners or their representatives will familiarize themselves with the rule.	—Petitioners or their representatives will need to read and understand the rule at an estimated total opportunity costs of time that ranges from $1,846,075 to $2,685,271.	—Petitioners will have the necessary information to take advantage of and comply with the provisions of this rule.

Source: USCIS and DOL analysis.

2. Background and Purpose of the Temporary Rule

The H–2B visa classification program was designed to serve U.S. businesses that are unable to find enough U.S. workers to perform nonagricultural work of a temporary or seasonal nature. For a nonimmigrant worker to be admitted into the United States under this visa classification, the hiring employer is required to: (1) Receive a temporary labor certification (TLC) from the Department of Labor (DOL); and (2) file Form I–129 with DHS. The temporary nature of the services or labor described on the approved TLC is subject to DHS review during adjudication of Form I–129.[139] The current INA statute sets the annual number of H–2B visas for workers performing temporary nonagricultural work at 66,000 to be distributed semi-annually beginning in October (33,000) and in April (33,000).[140] Any unused H–2B visas from the first half of the fiscal year will be available for employers seeking to hire H–2B workers during the second half of the fiscal year. However, any unused H–2B visas from one fiscal year do not carry over into the next and will therefore not be made available.[141] Once the statutory H–2B visa cap limit has been reached, petitioners must wait until the next half of the fiscal year, or the beginning of the next fiscal year, for additional visas to become available.

On March 15, 2022, the President signed the FY 2022 Omnibus that contains a provision (Sec. 204 of Div. O) permitting the Secretary of Homeland Security, under certain circumstances, to increase the number of H–2B visas available to U.S. employers, notwithstanding the established statutory numerical limitation. After consulting with the Secretary of Labor, the Secretary of the Homeland Security has determined it is appropriate to exercise his discretion and raise the H–2B cap by up to 35,000 visas for FY 2022 positions with start dates on or before September 30, 2022, for those businesses who would qualify under certain circumstances.

These businesses must attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H–2B workers requested on their petition. The Secretary has determined that up to 23,500 of the 35,000 these supplemental visas will be limited to specified H–2B returning workers for nationals of any country. Specifically, these individuals must be workers who were issued H–2B visas or were otherwise granted H–2B status in fiscal years 2019, 2020, or 2021. The Secretary has also determined that up to 11,500 of the 35,000 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti, and that these 11,500 workers will be exempt from the returning worker requirement. Once the 11,500 visa limit has been reached, a petitioner may continue to request H–2B visas for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti but these workers must be returning workers.

3. Population

This rule would affect those employers that file Form I–129 on behalf of nonimmigrant workers they seek to hire under the H–2B visa program. More specifically, this rule would affect those employers that can establish that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H–2B workers requested on their petition and without the exercise of authority that is the subject of this rule. Due to the temporary nature of this rule and the limited time left for employers to begin the H–2B filing process for positions with FY 2022 employment start dates on or before September 30, 2022,[142] DHS believes that it is reasonable to assume that eligible petitioners for these additional 35,000 visas will generally be those employers that have already completed the steps to receive an approved TLC prior to the issuance of this rule.

This rule would also have additional impacts on the population of H–2B employers and workers presently in the United States by permitting some H–2B workers to port to another certified employer. These H–2B workers would continue to earn wages and gaining employers would continue to obtain necessary workers.

a. Population That Will File a Form I–129, Petition for a Nonimmigrant Worker[143]

According to DOL OFLC's certification data for FY 2022, as of March 31, 2022, about 9,359 TLCs for 154,525 H–2B positions were received with expected work start dates between April 1, 2022 and September 30, 2022. DOL OFLC has approved 4,771 certifications for 79,947 H–2B positions and is still reviewing 3,804 TLC requests for 60,295 H–2B positions. DOL OFLC has denied, withdrawn, rejected, or returned 784 certifications for 14,283 H–2B positions.[144] However, many of these certified worker positions have already been filled under the semi-annual cap of 33,000 and, for approximately 10.4 percent of the worker positions certified and still under review by DOL, employers indicated on the Form ETA–9142B their intention to employ some or all of the H–2B workers under the application who will be exempt from the statutory visa cap.[145] Additionally, based on the average TLC requests received for work start dates between June 15 and September 30 during FY 2019–2021, DOL OFLC estimates that it may receive another 75 TLC requests covering approximately 1,200 H–2B worker positions for the remainder of fiscal year 2022 ending on September 30, 2022. The estimated total of approved, pending, and projected future TLCs, as of March 31, 2022, is 6,304 for 141,442 H–2B worker positions.[146] Assuming 10.4 percent of the approved, pending, and projected 141,442 H–2B worker petitions will be exempt from the statutory visa cap, we estimate

[139] Revised effective 1/18/2009; 73 FR 78104; 74 FR 2837.

[140] *See* 8 U.S.C. 1184(g)(1)(B), INA 214(g)(1)(B) and 8 U.S.C. 1184(g)(4), INA 214(g)(4).

[141] A Temporary Labor Certification (TLC) approved by the Department of Labor must accompany an H–2B petition. The employment start date stated on the petition must match the start date listed on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D).

[142] This assumption is based on the fact that, under DOL regulations, employers must apply for a TLC 75 to 90 days before the start date of work. 20 CFR 655.15(b).

[143] Source: DOL OFLC memo to USCIS Office of Policy and Strategy March 31, 2022.

[144] As of March 31, 2022, DOL OFLC had denied 176 applications for 3,405 positions and rejected 39 applications for 589 positions. Employers had withdrawn 569 applications for 10,289 positions. This totals 784 applications for 14,283 positions either denied, rejected, or withdrawn.

[145] Of the 79,947 certified H–2B worker positions, approximately 7.4 percent (5,940 certified H–2B worker positions) may be employed by employers under a cap exempt status. Of the 60,295 H–2B workers positions requested for certification and still under DOL review, approximately 14.3 percent (8,639 pending H–2B worker positions) may be employed by employers under a cap exempt status. This totals 14,579 H–2B workers positions associated with approved and pending TLCs where the H–2B worker may be employed by the employer under a cap exempt status; or 10.4 percent of all 140,242 positions associated with approved and pending TLCs.

[146] Calculation for petitioners: 4,771 approved certifications + 3,804 pending certifications + 75 expected certifications = 6,304 estimated total certifications.

Calculation for beneficiaries: 79,947 approved TLC positions + 60,295 pending TLC positions + 1,200 expected TLC positions = 141,442 total estimated TLC positions.

applications requesting approximately 126,732 H–2B beneficiaries.[147]

Of the estimated total 8,650 certified Applications for Temporary Employment Certification, USCIS data shows that 2,346 H–2B petitions for 39,254 positions with approved certifications were already filed toward the first semi-annual cap of 33,000 visas.[148] Therefore, we estimate that approximately 6,304 Applications for Temporary Employment Certification may be filed towards this FY 2022 supplemental cap.[149] USCIS recognizes that some employers would have to submit two Forms I–129 if they choose to request H–2B workers under both the returning worker and Northern Central American Countries/Haiti cap. At this time, USCIS cannot predict how many employers will choose to take advantage of this set-aside, and therefore recognize that the number of petitions may be underestimated.

b. Population That Files Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative

If a lawyer or accredited representative submits Form I–129 on behalf of the petitioner, Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, must accompany the Form I–129 submission.[150] Using data from FY 2017 to FY 2021, we estimate that 44.43 percent of Form I–129 petitions will be filed by a lawyer or accredited representative (Table 2). Table 2 shows the percentage of Form I–129 H–2B petitions that were accompanied by a Form G–28. Therefore, we estimate that 2,801 Forms I–129 and Forms G–28 will be filed by in-house or outsourced lawyers, and that 3,503 Forms I–129 will be filed by human resources (HR) specialists.[151]

TABLE 2—FORM I–129 H–2B PETITION RECEIPTS THAT WERE ACCOMPANIED BY A FORM G–28

[FY 2017–2021]

Fiscal year	Number of Form I–129 H–2B petitions accompanied by a Form G–28	Total Number of Form I–129 H–2B petitions received	Percent of Form I–129 H–2B petitions accompanied by a Form G–28
2017	2,615	6,112	42.78
2018	2,626	6,148	42.71
2019	3,335	7,461	44.70
2020	2,434	5,422	44.89
2021	4,229	9,159	46.17
2017–2021 Total	15,239	34,302	44.43

Source: USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on April 8, 2021, and December 2, 2021.

c. Population That Files Form I–907, Request for Premium Processing Service

Employers may use Form I–907, Request for Premium Processing Service, to request faster processing of their Form I–129 petitions for H–2B visas. Table 3 shows the percentage of Form I–129 H–2B petitions that were filed with a Form I–907. Using data from FY 2017 to FY 2021, USCIS estimates that approximately 93.67 percent of Form I–129 H–2B petitioners will file a Form I–907 requesting premium processing, though this could be higher because of the timing of this rule. Based on this historical data, USCIS estimates that 5,905 Forms I–907 will be filed with the Forms I–129 as a result of this rule.[152] Of these 5,905 premium processing requests, we estimate that 2,624 Forms I–907 will be filed by in-house or outsourced lawyers and 3,281 will be filed by HR specialists.[153]

[147] Calculation: 141,442 approved, pending, and projected H–2B worker positions * 89.6% of requested workers not being exempt from the statutory cap = 126,732 requested H–2B beneficiaries subject to the statutory cap.

[148] USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on March 31, 2022.

[149] Calculation: 8,650 approved, pending, and projected TLCs – 2,346 petitions for H–2B workers = 6,304 expected additional petitions for H–2B workers.

[150] USCIS, *Filing Your Form G–28, https://www.uscis.gov/forms/filing-your-form-g-28.*

[151] Calculation: 6,304 estimated additional petitions * 44.43 percent of petitions filed by a lawyer = 2,801 (rounded) petitions filed by a lawyer.

Calculation: 6,304 estimated additional petitions – 2,801 petitions filed by a lawyer = 3,503 petitions filed by an HR specialist.

[152] Calculation: 6,304 estimated additional petitions * 93.67 percent premium processing filing rate = 5,905 (rounded) additional Form I–907.

[153] Calculation: 5,905 additional Form I–907 * 44.43 percent of petitioners represented by a lawyer = 2,624 (rounded) additional Form I–907 filed by a lawyer.

Calculation: 5,905 additional Form I–907 – 2,624 additional Form I–907 filed by a lawyer = 3,281 additional Form I–907 filed by an HR specialist.

TABLE 3—FORM I–129 H–2B PETITION RECEIPTS THAT WERE ACCOMPANIED BY A FORM I–907
[FY 2017–2021]

Fiscal year	Number of Form I–129 H–2B petitions accompanied by Form I–907	Total number of Form I–129 H–2B petitions received	Percent of Form I–129 H–2B petitions accompanied by Form I–907
2017	5,932	6,112	97.05
2018	5,986	6,148	97.36
2019	7,227	7,461	96.86
2020	4,341	5,422	80.06
2021	8,646	9,159	94.40
2017–2021 Total	32,132	34,302	93.67

Source: USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on April 8, 2021, and December 2, 2021.

d. Population That Files Form ETA–9142–B–CAA–6, Attestation for Employers Seeking To Employ H–2B Nonimmigrant Workers Under Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103

Petitioners seeking to take advantage of this FY 2022 H–2B supplemental visa cap will need to file a Form ETA–9142–B–CAA–6 attesting that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H–2B workers requested on the petition, comply with third party notification, and maintain required records, among other requirements. DOL estimates that each of the 6,304 petitions will need to be accompanied by Form ETA–9142–B–CAA–6 and petitioners filing these petitions and attestations will need to comply with its provisions.

e. Population Affected by the Portability Provision

The population affected by this provision are nonimmigrants in H–2B status who are present in the United States and the employers with valid TLCs seeking to hire H–2B workers. We use the population of 66,000 H–2B workers authorized by statute, the 20,000 additional H–2B workers authorized by the previous supplemental cap, and the 35,000 additional H–2B workers authorized by this regulation as a proxy for the H–2B population that could be currently present in the United States.[154] We use the number of approved, pending, and projected TLCs (8,650) to estimate the potential number of Form I–129 H–2B petitions that incur impacts associated with this porting provision. USCIS uses the number of Forms I–129 filed for extension of stay due to change of employer relative to the Forms I–129 filed for new employment from FY 2011 to FY 2020, the ten years prior to the implementation of first portability provision in a H–2B supplemental cap TFR, to estimate the baseline rate. We compare the average rate from FY 2011–FY 2020 to the rate from FY 2021. Table 4 presents the number of Form I–129 filed extensions of stay due to change of employer and Form I–129 filed for new employment for Fiscal year 2011 through 2020. The average rate of extension of stay due to change of employer compared to new employment is approximately 10.5 percent.

TABLE 4—NUMBERS OF FORM I–129 H–2B PETITIONS FILED FOR EXTENSION OF STAY DUE TO CHANGE OF EMPLOYER AND FORM I–129 H–2B PETITIONS FILED FOR NEW EMPLOYMENT
[FY 2011–FY 2020]

Fiscal year	Form I–129 H–2B petitions filed for extension of stay due to change of employer	Form I–129 H–2B petitions filed for new employment	Rate of extension to stay due to change of employer filings relative to new employment filings
2011	360	3,887	0.093
2012	293	3,688	0.079
2013	264	4,120	0.064
2014	314	4,666	0.067
2015	415	4,596	0.090
2016	427	5,750	0.074
2017	556	5,298	0.105
2018	744	5,136	0.145
2019	812	6,251	0.130

[154] H–2B workers may have varying lengths in time approved on their H–2B visas. This number may overestimate H–2B workers who have already completed employment and departed and may underestimate H–2B workers not reflected in the current cap and long-term H–2B workers. In FY 2021, 735 requests for change of status to H–2B were approved by USCIS and 1,341 crossings of visa-exempt H–2B workers were processed by Customs and Border Protection (CBP). *See Characteristics of H–2B Nonagricultural Temporary Workers FY2021 Report to Congress at https://www.uscis.gov/sites/default/files/document/reports/H-2B-FY21-Characteristics-Report.pdf* (accessed April 4, 2022). USCIS assumes some of these workers, along with current workers with a valid H–2B visa under the cap, could be eligible to port under this new provision. USCIS does not know the exact number of H–2B workers who would be eligible to port at this time but uses the cap and supplemental cap allocations as a possible proxy for this population.

TABLE 4—NUMBERS OF FORM I–129 H–2B PETITIONS FILED FOR EXTENSION OF STAY DUE TO CHANGE OF EMPLOYER AND FORM I–129 H–2B PETITIONS FILED FOR NEW EMPLOYMENT—Continued

[FY 2011–FY 2020]

Fiscal year	Form I–129 H–2B petitions filed for extension of stay due to change of employer	Form I–129 H–2B petitions filed for new employment	Rate of extension to stay due to change of employer filings relative to new employment filings
2020	804	3,997	0.201
FY 2011–2020 Total	4,990	47,389	0.105

Source: USCIS, Office of Performance and Quality, Data pulled on December 6, 2021.

In FY 2021, the first year a H–2B supplemental cap included a portability provision, there were 1,114 Forms I–129 filed for extension of stay due to change of employer compared to 7,206 Forms I–129 filed for new employment.[155] As of March 31, 2022, another year where the H–2B supplemental cap included a portability provision, there have been 614 Form I–129 filed for extension of stay due to change of employer compared to 3,062 Forms I–129 filed for new employment.[156] Over the period when a portability provision was in place for H–2B workers, the rate of Form I–129 for extension of stay due to change of employer relative to new employment is 16.8 percent.[157] This is above the 10.5 percent rate expected without a portability provision. 16.8 percent is our estimate of the rate expected in periods with a portability provision in the supplemental visa allocation. Using the 8,650 as our estimate for the number of Forms I–129 filed for H–2B new employment in the second half of FY 2022, we estimate that 908 Forms I–129 for extension of stay due to change of employer would be filed in absence of this provision.[158] With this portability provision, we estimate that 1,453 Forms I–129 for extension of stay due to change of employer would be filed.[159] This difference results in 545 additional Forms I–129 as a result of this provision.[160] As previously estimated, we expect that about 44.43 percent of Form I–129 petitions will be filed by an in-house or outsourced lawyer. Therefore, we expect that 242 of these petitions will be filed by a lawyer and the remaining 303 will be filed by a HR specialist.[161] Previously in this analysis, we estimated that about 93.67 percent of Form I–129 H–2B petitions are filed with Form I–907 for premium processing. As a result of this portability provision, we expect that an additional 511 Forms I–907 will be filed.[162] We expect 227 of those Forms I–907 will be filed by a lawyer and the remaining 284 will be filed by an HR specialist.[163]

f. Population Affected by the Audits

Under this time-limited FY 2022 H–2B supplemental cap rule, DHS intends to conduct 250 audits of employers hiring H–2B workers and DOL intends to conduct 100 audits of employers hiring H–2B workers. The determination of which employers are audited will be done at the discretion of the Departments, though the agencies will coordinate so that no employer is audited by both DOL and DHS. Therefore, a total of 350 audits on employers that petition for H–2B workers under this TFR will be conducted by the Federal Government.[164]

g. Population Affected by Additional Scrutiny

DHS expects that petitioners who have been cited by WHD for H–2B program violations will undergo additional scrutiny from USCIS. To estimate the number of firms expected to undergo increased scrutiny, we utilize DOL's Wage and Hour Compliance Action Data.[165] The data available here is for concluded cases. Table 5 presents the number of employers that were cited for H–2B violations that have a worker protection violation end date in FYs 2017–2021.

The worker protection violation end date is established based on the ''findings end date'' which represents the date that the last worker protection

[155] USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on March 31, 2022.

[156] USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on March 31, 2022.

[157] Calculation, Step 1: 1,114 Form I–129 petitions for extension of stay due to change of employer FY 2021 + 614 Form I–129 petitions for extension of stay due to change of employer FY 2022 as of March 31, 2022 = 1,728 Form I–129 petitions filed extension of stay sue to change of employer in portability provision years.

Calculation, Step 2: 7,206 Form I–129 petitions filed for new employment in FY 2021 + 3,062 Form I–129 petitions filed for new employment in FY 2022 as of March 31, 2022 = 10,268 Form I–129 petitions filed for new employment in portability provision years.

Calculation, Step 3: 1,728 extension of stay due to change of employment petitions/10,268 new employment petitions = 16.8 percent rate of extension of stay due to change of employment to new employment.

[158] Calculation: 8,650 Form I–129 H–2B petitions filed for new employment * 10.5 percent = 908 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, no portability provision.

[159] Calculation: 8,650 Form I–129 H–2B petitions filed for new employment * 16.8 percent = 1,453 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, with a portability provision.

[160] Calculation: 1,453 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, with a portability provision − 908 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, no portability provision = 545 Form I–129 H–2B petition increase as a result of portability provision.

[161] Calculation, Lawyers: 545 additional Form I–129 due to portability provision * 44.43 percent of Form I–129 for H–2B positions filed by an attorney or accredited representative = 242 (rounded) estimated Form I–129 filed by a lawyer.

Calculation, HR specialist: 545 additional Form I–129 due to portability provision − 242 estimated Form I–129 filed by a lawyer = 303 estimated Form I–129 filed by an HR specialist.

[162] Calculation: 8,650 Form I–129 H–2B petitions * 93.67 percent premium processing filing rate = 511 Forms I–907.

[163] Calculation, Lawyers: 511 Forms I–907 * 44.43 percent filed by an attorney or accredited representative = 227 Forms I–907 filed by a lawyer.

Calculation, HR specialists: 511 Forms I–907 − 227 Forms I–907 filed by a lawyer = 284 Forms I–907 filed by an HR specialist.

[164] These 350 audits are separate and distinct from WHD's investigations pursuant to its existing enforcement authority.

[165] Available at *https://enforcedata.dol.gov/views/data_catalogs.php* (accessed April 6, 2022).

violation occurred in the concluded case. During FY 2017–2021, on average 69 (rounded) employers that were cited for H–2B violations had a worker protection violation end date each year. USCIS intends to request evidence from employers cited for H–2B violations with a worker protection violation end date in the last two years. Therefore, for purposes of this analysis, we expect 138 petitioners will undergo additional scrutiny from USCIS.[166]

TABLE 5—EMPLOYERS WITH H–2B VIOLATIONS WITH WORKER PROTECTION VIOLATION END DATE IN FY 2017–2021

Fiscal year	Employers cited for H–2B violations with worker protection violation end date in fiscal year
2017	62
2018	86
2019	104
2020	65
2021	29
Five-year Average (rounded)	69

Source: USCIS analysis of DOL Wage and Hour Compliance Action Data.

h. Population Expected To Familiarize Themselves With This Rule

DHS expects the population of employers with approved, pending, or projected Applications for Temporary Employment Certification will need to familiarize themselves with this rule; an estimated 8,650 employers. We use the 8,650 population, rather than the estimated 6,304 expected to file a petition, because the portability provision is expected to be available to 8,650 potential filers. As discussed above, we do not expect all of these potential filers to take advantage of the portability provision; we do expect that they will read and understand the rule to inform a decision about using the portability provision.

We expect familiarization with the rule will be performed by a HR specialist, in-house lawyer, or outsourced lawyer, and this will be done at the same rate as petitioners who file a Form G–28; an estimated 44.43 percent performed by lawyers. Therefore we estimate that 3,843 lawyers will incur familiarization costs and 4,807 HR specialists will incur familiarization costs.[167]

4. Cost-Benefit Analysis

The provisions of this rule require the submission of a Form I–129 H–2B petition. The costs for this form include filing costs and the opportunity cost of time to complete and submit the form. The current filing fee for Form I–129 is $460 and employers filing H–2B petitions must submit an additional fee of $150.[168] These filing fees are not a cost to society but a transfer from the petitioner to USCIS in exchange for agency services. In this case the filing fee is a also proxy for the total costs incurred by USCIS during the process of adjudicating a Form I–129 H–2B petition at the request of the petitioner.

The total estimated cost from filing fees for H–2B petitions using Form I–129 is $610.[169] The estimated time to complete and file Form I–129 for H–2B classification is 4.34 hours.[170] The petition must be filed by a U.S. employer, a U.S. agent, or a foreign employer filing through the U.S. agent. DHS estimates that 44.43 percent of Form I–129 H–2B petitions will be filed by an in-house or outsourced lawyer, and the remainder (55.57 percent) will be filed by an HR specialist or equivalent occupation. DHS presents estimated costs for HR specialists filing Form I–129 petitions and an estimated range of costs for in-house lawyers or outsourced lawyers filing Form I–129 petitions.

To estimate the total opportunity cost of time to HR specialists who complete and file Form I–129, DHS uses the mean hourly wage rate of HR specialists of $34.00 as the base wage rate.[171] If petitioners hire an in-house or outsourced lawyer to file Form I–129 on their behalf, DHS uses the mean hourly wage rate $71.71 as the base wage rate.[172] Using the most recent Bureau of Labor Statistics (BLS) data, DHS calculated a benefits-to-wage multiplier of 1.45 to estimate the full wages to include benefits such as paid leave, insurance, and retirement.[173] DHS multiplied the average hourly U.S. wage rate for HR specialists and for in-house lawyers by the benefits-to-wage multiplier of 1.45 to estimate total compensation to employees. The total compensation for an HR specialist is $49.30 per hour, and the total compensation for an in-house lawyer is $103.98 per hour.[174] In addition, DHS recognizes that an entity may not have in-house lawyers and seek outside counsel to complete and file Form I–129 on behalf of the petitioner. Therefore, DHS presents a second wage rate for lawyers labeled as outsourced lawyers. DHS recognizes that the wages for outsourced lawyers may be much higher than in-house lawyers and therefore uses a higher compensation-to-wage multiplier of 2.5 for outsourced lawyers.[175] DHS estimates the total

[166] It is possible not every employer that has been cited for an H–2B violation in the last two years will petition for H–2B employees under this supplemental cap authority. DHS considers an upper limit of 138 to be a reasonable estimate of the number of petitioners that would undergo additional scrutiny.

[167] Calculation for lawyers: 8,650 approved, pending, and projected applicants * 44.43 percent represents by a lawyer = 3,843 (rounded) represented by a lawyer.

Calculation for HR specialists: 8,650 approved, pending, and projected applicants − 3,843 represented by a lawyer = 4,807 represented by an HR specialist.

[168] *See* Form I–129 instructions at *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (accessed March 30, 2022). *See also* 8 U.S.C. 1184(c)(13).

[169] Calculation: $460 current filing fee for Form I–129 + $150 additional filing fee for employers filing H–2B petitions = $610 total estimated filing fees for H–2B petitions using Form I–129.

[170] The public reporting burden for this form is 2.34 hours for Form I–129 and an additional 2.00 hours for H Classification Supplement, totaling 4.34 hours. *See* Form I–129 instructions at *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (accessed March 30, 2022).

[171] U.S. Department of Labor, Bureau of Labor Statistics, ''May 2021 National Occupational Employment and Wage Statistics'' Human Resources Specialist (13–1071), Mean Hourly Wage, available at *https://www.bls.gov/oes/2021/may/oes131071.htm* (accessed March 31, 2022).

[172] U.S. Department of Labor, Bureau of Labor Statistics. ''May 2021 National Occupational Employment and Wage Estimates'' Lawyers (23–1011), Mean Hourly Wage, available at *https://www.bls.gov/oes/2021/may/oes231011.htm* (accessed March 31, 2022).

[173] Calculation: $40.35 mean Total Employee Compensation per hour for civilian workers / $27.83 mean Wages and Salaries per hour for civilian workers = 1.45 benefits-to-wage multiplier. *See* Economic News Release, Bureau of Labor Statistics, U.S. Department of Labor, Employer Costs for Employee Compensation—December 2021 Table 1. Employer Costs for Employee Compensation by ownership, Civilian workers, available at *https://www.bls.gov/news.release/archives/ecec_03182022.pdf* (accessed March 30, 2022).

[174] Calculation, HR specialist: $34.00 mean hourly wage * 1.45 benefits-to-wage multiplier = $49.30 hourly total compensation (hourly opportunity cost of time).

Calculation, In-house Lawyer: $71.71 mean hourly wage * 1.45 benefits-to-wage multiplier = $103.98 hourly total compensation (hourly opportunity cost of time).

[175] The DHS ICE ''Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' acknowledges that ''the cost of hiring services provided by an outside vendor or contractor is two to three times more expensive than the wages paid by the employer for that service produced by an in-house employee'', based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis (SEIA) remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, October 28, 2008, 73 FR 63843, available at *https://www.regulations.gov/document/ICEB-2006-0004-0921* (accessed April 5, 2022). Also see ''Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers.'' January 28, 2022, 87 FR 4722. Available at *https://*

Continued

compensation for an outsourced lawyer is $179.28 per hour.[176] If a lawyer submits Form I–129 on behalf of the petitioner, Form G–28 must accompany the Form I–129 petition.[177] DHS estimates the time burden to complete and submit Form G–28 for a lawyer is 50 minutes (0.83 hour, rounded).[178] For this analysis, DHS adds the time to complete Form G–28 to the opportunity cost of time to lawyers for filing Form I–129 on behalf of a petitioner. This results in a time burden of 5.17 hours for in-house lawyers and outsourced lawyers to complete Form G–28 and Form I–129.[179] Therefore, the total opportunity cost of time per petition for an HR specialist to complete and file Form I–129 is approximately $213.96, for an in-house lawyer to complete and file Forms I–129 and G–28 is about $537.58, and for an outsourced lawyer to complete and file is approximately $926.88.[180] The total cost, including filing fees and opportunity costs of time, per petitioner to file Form I–129 is approximately $823.96 if filed by an HR specialist, $1,147.58 if filed by an in-house lawyer, and $1,536.88 if filed by an outsourced lawyer.[181]

a. Cost to Petitioners

As mentioned in *Section 3,* the estimated population impacted by this rule is 6,304 eligible petitioners who are projected to apply for the additional 35,000 H–2B visas for the second half of FY 2022, with 11,500 of the additional visas reserved for employers that will petition for workers who are nationals of the Northern Central American countries and Haiti, who are exempt from the returning worker requirement.

i. Costs to Petitioners To File Form I–129 and Form G–28

As discussed above, DHS estimates that an additional 3,503 petitions will be filed by HR specialists using Form I–129 and an additional 2,801 petitions will be filed by lawyers using Form I–129 and Form G–28. DHS estimates the total cost to file Form I–129 petitions if filed by HR specialists is $2,886,332 (rounded).[182] DHS estimates total cost to file Form I–129 petitions and Form G–28 if filed by lawyers will range from $3,214,372 (rounded) if only in-house lawyers file these forms to $4,304,801 (rounded) if only outsourced lawyers file them.[183] Therefore, the estimated total cost to file Form I–129 and Form G–28 range from $6,100,704 and $7,191,133.[184]

ii. Costs to File Form I–907

Employers may use Form I–907 to request premium processing of Form I–129 petitions for H–2B visas. The filing fee for Form I–907 for H–2B petitions is $1,500 and the time burden for completing the form is 35 minutes (0.58 hour).[185] [186] Using the wage rates established previously, the opportunity cost of time to file Form I–907 is approximately $28.59 for an HR specialist, $60.31 for an in-house lawyer, and $103.98 for an outsourced lawyer.[187] Therefore, the total filing cost to complete and submit Form I–907 per petitioner is approximately $1,528.59 for HR specialists, $1,560.31 for in-house lawyers, and $1,603.98 for outsourced lawyers.[188]

As discussed above, DHS estimates that an additional 3,281 Form I–907 will be filed by HR specialists and an additional 2,624 Form I–907 will be filed lawyers. DHS estimates the total cost of Form I–907 filed by HR specialists is about $5,015,304 (rounded).[189] DHS estimates total cost to file Form I–907 filed by lawyers range from about $4,094,253 (rounded) for only in-house lawyers to $4,208,844 (rounded) for only outsourced lawyers.[190] The estimated total cost to file Form I–907 range from $9,109,557 and $9,224,148.[191]

iii. Cost To File Form ETA–9142–B–CAA–6

Form ETA–9142–B–CAA–6 is an attestation form that includes recruiting requirements, the irreparable harm standard, and document retention obligations. DOL estimates the time burden for completing and signing the form is 0.25 hour, 0.25 hours for retaining records, and 0.50 hours to comply with the returning workers' attestation, for a total time burden of 1 hour. Using the $49.30 hourly total compensation for an HR specialist, the opportunity cost of time for an HR specialist to complete the attestation form, notify third parties, and retain records relating to the returning worker

www.regulations.gov/document/DHS-2022-0010-0001 (accessed April 5, 2022).

[176] Calculation, Outsourced Lawyer: $71.71 mean hourly wage * 2.5 benefits-to-wage multiplier = $179.28 hourly total compensation (hourly opportunity cost of time).

[177] USCIS, Filing Your Form G–28, *https://www.uscis.gov/forms/filing-your-form-g-28* (accessed April 4, 2022).

[178] USCIS, G–28, Instructions for Notice of Entry of Appearance as Attorney or Accredited Representative, *https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf.*

Calculation: 50 minutes / 60 minutes per hour = 0.83 hour (rounded).

[179] Calculation: 0.83 hour to file Form G–28 + 4.34 hours to file Form I–129 = 5.17 hours to file both forms.

[180] Calculation, HR specialist files Form I–129: $49.30 hourly opportunity cost of time * 4.34 hours = $213.96 opportunity cost of time per petition.

Calculation, In-house Lawyer files Form I–129 and Form G–28: $103.98 hourly opportunity cost of time * 5.17 hours = $537.58 opportunity cost of time per petition.

Calculation, Outsourced Lawyer files Form I–129 and Form G–28: $179.28 hourly opportunity cost of time * 5.17 hours = $926.88 opportunity cost of time per petition.

[181] Calculation, HR specialist: $213.96 opportunity cost of time + $610 filing fees = $823.96 cost per petition.

Calculation, In-house Lawyer: $537.58 opportunity cost of time + $610 filing fees = $1,147.58 cost per petition.

Calculation, Outsourced Lawyer: $926.88 opportunity cost of time + $610 filing fees = $1,536.88 cost per petition.

[182] Calculation, HR specialist: $823.96 cost per petition * 3,503 Form I–129 = $2,886,332 (rounded) total cost.

[183] Calculation, In-house Lawyer: $1,147.58 cost per petition * 2,801 Form I–129 and Form G–28 = $3,214,372 (rounded) total cost.

Calculation, HR specialist: $1,536.88 cost per petition * 2,801 Form I–129 and Form G–28 = $4,304,801 (rounded) total cost.

[184] Calculation: $2,886,332 total cost of Form I–129 filed by HR specialists + $3,214,372 total cost of Form I–129 and Form G–28 filed by in-house lawyers = $6,100,704 estimated total costs to file Form I–129 and G–28.

Calculation: $2,886,332 total cost of Form I–129 filed by HR specialists + $4,304,801 total cost of Form I–129 and G–28 filed by outsourced lawyers = $7,191,133 estimated total costs to file Form I–129 and G–28.

[185] The filing fee is a transfer from the petitioner requesting premium processing and also a proxy for the total costs to USCIS.

[186] See Form I–907 instructions at *https://www.uscis.gov/i-907* (accessed December 1, 2021).

Calculation: 35 minutes/60 minutes per hour = 0.58 (rounded) hour.

[187] Calculation, HR specialist Form I–907: $49.30 hourly opportunity cost of time * 0.58 hour = $28.59 opportunity cost of time per request.

Calculation, In-house Lawyer Form I–907: $103.98 hourly opportunity cost of time * 0.58 hour = $60.31 opportunity cost of time per request.

Calculation, Outsourced Lawyer Form I–907: $179.28 hourly opportunity cost of time * 0.58 hour = $103.98 opportunity cost of time per request.

[188] Calculation, HR specialist: $28.59 opportunity cost of time + $1,500 filing fee = $1,528.59.

Calculation, In-house Lawyer: $60.31 opportunity cost of time + $1,500 filing fee = $1,560.31.

Calculation, Outsourced Lawyer: $103.98 opportunity cost of time + $1,500 filing fee = $1,603.98.

[189] Calculation, HR specialist: $1,528.59 opportunity costs plus filing fees * 3,281 Form I–907 = $5,015,304 (rounded) total cost of Form I–907 filed by HR specialists.

[190] Calculation, In-house Lawyer: $1,560.31 opportunity costs plus filing fees * 2,624 Form I–907 = $4,094,253 (rounded) total cost of Form I–907 filed by in-house lawyers.

Calculation: $1,603.98 opportunity costs plus filing fees * 2,624 Form I–907 = $4,208,844 (rounded) total cost of Form I–907 filed by outsourced lawyers.

[191] Calculation: $5,015,304 total cost of Form I–907 filed by HR specialists + $4,094,253 total cost of Form I–907 filed by in-house lawyers = $9,109,557 estimated total costs to file Form I–907.

Calculation: $5,015,304 total cost of Form I–129 filed by HR specialists + $4,208,844 total cost of Form I–907 filed by outsourced lawyers = $9,224,148 estimated total costs to file Form I–907.

requirements is approximately $49.30.[192]

Additionally, the form requires that petitioners assess and document supporting evidence for meeting the irreparable harm standard, and retain those documents and records, which we assume will require the resources of a financial analyst (or another equivalent occupation). Using the same methodology previously described for wages, the mean hourly wage for a financial analyst is $49.53, and the estimated hourly total compensation for a financial analyst is $71.82.[193] [194] DOL estimates the time burden for these tasks is at least 4 hours, and 1 hour for gathering and retaining documents and records, for a total time burden of 5 hours. Therefore, the total opportunity cost of time for a financial analyst to assess, document, and retain supporting evidence is approximately $359.10.[195]

As discussed previously, DHS believes that the estimated 6,304 remaining certifications for the second half of FY 2022 would include potential employers that might request to employ H–2B workers under this rule. This number of certifications is a reasonable proxy for the number of employers that may need to review and sign the attestation. Using this estimate for the total number of certifications, we estimate the opportunity cost of time for completing the attestation for HR specialists is approximately $310,787 (rounded) and for financial analysts is about $2,263,766 (rounded).[196] The estimated total cost is approximately $2,574,553.[197]

[192] Calculation: $49.30 hourly opportunity cost of time * 1-hour time burden for the new attestation form and notifying third parties and retaining records related to the returning worker requirements = $49.30.

[193] U.S. Department of Labor, Bureau of Labor Statistics, ''May 2021 National Occupational Employment and Wage Statistics'' Financial and Investment Analysts (13–2051), *https://www.bls.gov/oes/2021/may/oes132051.htm* (accessed March 31, 2022).

[194] Calculation: $49.53 mean hourly wage for a financial analyst * 1.45 benefits-to-wage multiplier = $71.82.

[195] Calculation: $71.82 estimated total compensation for a financial analyst * 5 hours to meet the requirements of the irreparable harm standard = $359.10.

[196] Calculations, HR specialists: $49.30 opportunity cost of time to comply with attestation requirements * 6,304 estimated additional petitions = $310,787 (rounded) total cost to comply with attestation requirements.

Calculation, Financial Analysts: $359.10 opportunity cost of time to comply with attestation requirements * 6,304 estimated additional petitions = $2,263,766 (rounded) to comply with attestation requirements.

[197] Calculation: $310,787 total cost for HR specialist to comply with attestation requirement + $2,263,766 total cost for financial analysts to comply with attestation requirements = $2,574,553 total cost to comply with attestation requirements.

iv. Cost To Conduct Recruitment

An employer that files Form ETA–9142B–CAA–6 and the I–129 petition 30 or more days after the certified start date of work must conduct additional recruitment of U.S. workers. This consists of placing a new job order with the State Workforce Agency (SWA), contacting the American Job Center (AJC), contacting laid-off workers, and, if applicable, contacting the AFL–CIO. Employers must place a new job order for the job opportunity with the SWA.

Employers are required to make reasonable efforts to contact, by mail or other effective means, their former U.S. workers, including those workers who were furloughed and laid off, beginning January 1, 2020. Employers must also disclose the terms of the job order to these workers as required by the rule.

During the period the SWA is actively circulating the job order, employers must contact, by email or other available electronic means, the nearest local AJC to request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and to provide to the AJC the unique identification number associated with the job order placed with the SWA.

If the occupation is traditionally or customarily unionized, employers must provide written notification of the job opportunity to the nearest American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) office covering the area of intended employment, by providing a copy of the job order, and request assistance in recruiting qualified U.S. workers for the job opportunity.

Finally, the employer is required to provide a copy of the job order to the bargaining representative for its employees in the occupation and area of intended employment, consistent with 20 CFR 655.45(a), or if there is no bargaining representative, post the job order in the places and manner described in 20 CFR 655.45(b).

DOL estimates the average expected time burden for activities related to conducting recruitment is 3 hours.[198] Assuming this work will be done by an HR specialist or an equivalent occupation, the estimated cost to each petitioner is approximately $147.90.[199] Using the 6,304 as the estimated number of petitioners, the estimated total cost of this provision is approximately $932,362 (rounded).[200] It is possible that if U.S. employees apply for these positions, H–2B employers may incur some costs associated with reviewing applications, interviewing, vetting, and hiring applicants who are referred to H–2B employers by the recruiting activities required by this rule. However, DOL is unable to quantify the impact.

[198] This is the average expected time burden across all employers; not all employers will need to notify the AFL–CIO, because not all occupation are traditionally or customarily unionized. DOL estimates the time burden for placing a new job order for the job opportunity with SWA is 1 hour, 0.5 hours for contacting the nearest AJC, 1 hour for contacting former U.S. workers, and 0.5 hours to provide a copy of job order to the bargaining representative and written notification of job opportunity to nearest AFL–CIO if the occupation is traditionally or customerly unionized, for a total time burden of 3 hours.

v. Cost of the COVID Protection Provision

Employers must notify employees, in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites. We assume that employers will provide a printed notification to inform their employees, such as the free publicly available posters published by DOL's WHD. We also assume that printing and posting the notification can be done during the normal course of business and expect that an employer would need to post two copies of a one-page notification. One of these copies would be in English and a second copy would be in a foreign language. The printing cost associated with posting the notifications (assuming that the notification is written) is $0.15 per posting.[201] The estimated total cost to petitioners to print copies is approximately $1,891 (rounded).[202] Print costs may be higher if employers have to print notifications in more than two languages.

vi. Cost of the Portability Provision

Petitioners seeking to hire H–2B nonimmigrants who are currently present in the United States with a valid H–2B visa would need to file a Form I–129 which includes paying the associated fee as discussed above. Also previously discussed, we assume that all employers with an approved TLC (8,650) would be able to file a petition under this provision, and estimate that

[199] Calculation: $49.30 hourly opportunity cost of time for an HR specialist * 3 hours to conduct additional recruitment = $147.90 per petitioner cost to conduct additional recruitment.

[200] Calculation: 6,304 estimated number of petitioners * $147.90 per petitioner cost to conduct additional recruitment = $932,362 (rounded) total cost to conduct additional recruitment.

[201] See *https://www.montgomerycountymd.gov/Library/services/computerhelp.html* (accessed March 30, 2022). Cost to make black and white copies.

[202] Calculation: $0.15 per posting * 6,304 estimated number of petitioners * 2 copies = $1,891 (rounded) cost of postings.

approximately 545 additional Form I–129 H–2B petitions will be filed as a result of this provision.

As discussed previously, if a petitioner is represented by a lawyer, the lawyer must file Form G–28; if premium processing is desired, a petitioner must file Form I–907 and pay the associated fee. We expect these actions to be performed by an HR specialist, in-house lawyer, or an outsourced lawyer. Moreover, as previously estimated, we expect that about 44.43 percent of these Form I–129 petitions will be filed by an in-house or outsourced lawyer. Therefore, we expect that 242 of these petitions will be filed by a lawyer and the remaining 303 will be filed by a HR specialist. As previously discussed, the estimated cost to file a Form I–129 H–2B petition is $823.96 for an HR specialist; and the estimated cost to file a Form I–129 H–2B petition with accompanying Form G–28 is $1,147.58 for an in-house lawyer and $1,536.88 for an outsourced lawyer. Therefore, we estimate the cost of the additional Forms I–129 from the portability provision for HR specialists is $249,660.[203] The estimated cost of the additional Forms I–129 accompanied by Forms G–28 from the portability provision for lawyers is $277,714 if filed by in-house lawyers and $371,925 if filed by outsourced lawyers.[204]

Previously in this analysis, we estimated that about 93.67 percent of Form I–129 H–2B petitions are filed with Form I–907 for premium processing. As a result of this provision, we expect that an additional 511 Forms I–907 will be filed.[205] We expect 227 of those Forms I–907 will be filed by a lawyer and the remaining 284 will be filed by an HR specialist.[206] As previously discussed, the estimated cost to file a Form I–907 is $1,528.59 for an HR specialist; and the estimated cost to file a Form I–907 is approximately $1,560.31 for an in-house lawyer and $1,603.98 for an outsourced lawyer. The estimated total cost of the additional Forms I–907 if HR specialists file is $434,120.[207] The estimated total cost of the additional Forms I–907 is $354,190 if filed by in-house lawyers and $364,103 if filed by outsourced lawyers.[208]

The estimated total cost of this provision ranges from $1,315,684 to $1,419,808 depending on what share of the forms are filed by in-house or outsourced lawyers.[209]

vii. Cost of Audits to Petitioners

DHS intends to conduct 250 audits of employers hiring H–2B workers and DOL intends to conduct 100 audits of employers hiring H–2B workers, for a total of 350 employers. Employers will need to provide requested information to comply with the audit. The expected time burden to comply with audits conducted by DHS and DOL's Office of Foreign Labor Certification is estimated to be 12 hours.[210] We expect that providing these documents will be accomplished by an HR specialist or equivalent occupation. Given an hourly opportunity cost of time of $49.30, the estimated cost of complying with audits is $591.60 per audited employer.[211] Therefore, the total estimated cost to employers to comply with audits is $207,060.[212]

viii. Cost of Additional Scrutiny

The Departments expect that petitioners undergoing additional scrutiny will need to submit additional evidence to USCIS. In addition to the previously described burden to assess, document and retain evidence, submission of this evidence is expected to require printing and mailing hundreds of pages of documents. To estimate the cost of additional scrutiny, we assume 138 petitioners will need to print 500 pages of documents and mail this to USCIS. These documents are expected to be able to fit in a Priority Mail Medium Flat Rate box which costs $16.10.[213] We estimate the costs of printing at $0.15 per page, and the cost of printing 500 pages is estimated to be $75.00.[214] The estimated cost for an employer to print and ship evidence to USCIS is $91.10.[215] With an estimated 138 petitioners expected to print and ship evidence, the total estimated costs for printing and shipping evidence is $12,572.[216]

Petitioners are also expected to incur a time burden associated with printing and shipping evidence to USCIS. We estimate it will take an HR specialist or equivalent employee 1 hour to print and ship evidence. Using $49.30 hourly opportunity cost of time for HR specialist, we estimate the opportunity cost of time for each petitioner is $49.30.[217] With an estimated 138 petitioners expected to print and ship evidence, the total estimated opportunity cost of time to print and ship evidence is $6,803.[218]

We do not expect this provision to impose new costs on to USCIS. The costs to request and review evidence from petitioners is included in the fees paid to the agency.

The total estimated cost of additional scrutiny is $19,375.[219]

ix. Familiarization Costs

We expect that petitioners or their representatives would need to read and understand this rule if they seek to take advantage of the supplemental cap. As a result, we expect this rule would impose one-time familiarization costs associated with reading and understanding this rule. As shown previously, we estimate that

[203] Calculation, HR specialist: $823.96 estimated cost to file a Form I–129 H–2B petition * 303 petitions = $249,660 (rounded).

[204] Calculation, In-house Lawyer: $1,147.58 estimated cost to file a Form I–129 H–2B petition and accompanying Form G–28 * 242 petitions = $277,714 (rounded).

Calculation, Outsourced Lawyer: $1,536.88 estimated cost to file a Form I–129 H–2B petition and accompanying Form G–28 * 242 petitions = $371,925 (rounded).

[205] Calculation: 545 estimated additional Form I–129 H–2B petitions * 93.67 percent accompanied by Form I–907 = 511 (rounded) additional Form I–907.

[206] Calculation, Lawyers: 511 additional Form I–907 * 44.43 percent = 227 (rounded) Form I–907 filed by a lawyer.

Calculation, HR specialists: 511 Form I–907 − 227 Form I–907 filed by a lawyer = 284 Form I–907 filed by an HR specialist.

[207] Calculation, HR specialist: $1,528.59 to file a Form I–907 * 284 forms = $434,120 (rounded).

[208] Calculation, In-house lawyer: $1,560.31 to file a Form I–907 * 227 forms = $354,190 (rounded).

Calculation for an outsourced lawyer: $1,603.98 to file a Form I–907 * 227 forms = $364,103 (rounded).

[209] Calculation for HR specialists and in-house lawyers: $249,660 for HR specialists to file Form I–129 H–2B petitions + $277,714 for in-house lawyers to file Form I–129 and the accompanying Form G–28 + $434,120 for HR specialists to file Form I–907 + $354,190 for in-house lawyers to file Form I–907 = $1,315,684.

Calculation for HR specialists and outsourced lawyers: $249,660 for HR specialists to file Form I–129 H–2B petitions + $371,925 for outsourced lawyers to file Form I–129 and the accompanying Form G–28 + $434,120 for HR specialists to file Form I–907 + $364,103 for outsourced lawyers to file Form I–907 = $1,419,808.

[210] The number in hours for audits was provided by the USCIS, Service Center Operations.

[211] Calculation: $49.30 hourly opportunity cost of time for an HR specialist * 12 hours to comply with an audit = $591.60 per audited employer.

[212] Calculation: 350 audited employers * $591.60 opportunity cost of time to comply with an audit = $207,060.

[213] USPS, Priority Mail, *https://www.usps.com/ship/priority-mail.htm* (accessed April 5, 2022).

[214] Calculation: 500 pages * $0.15 per page = $75.00 in printing costs.

[215] Calculation: $75.00 in printing costs + $16.10 in shipping costs = $91.10 to print and ship evidence.

[216] Calculation: 138 petitioners * $91.10 to print and ship evidence = $12,572 total printing and shipping costs.

[217] Calculation: $49.30 hourly opportunity cost of time for HR specialist * 1 hour to print and ship evidence = $49.30 opportunity cost of time per petitioner.

[218] Calculation: 138 petitioners * $49.30 opportunity cost of time per petitioner = $6,508 total estimated opportunity cost of time to print and ship evidence.

[219] Calculation: $12,572 total printing and shipping costs + $6,803 total opportunity cost of time = $19,375 total estimated cost of additional scrutiny.

approximately 8,650 petitioners may take advantage of the provisions of this rule, and that 3,843 of these petitioners are expected to be represented by a lawyer and 4,807 are expected to be represented by a HR representative.

To estimate the cost of rule familiarization, we estimate the time it will take to read and understand the rule by assuming a reading speed of 238 words per minute.[220] This rule has approximately 41,000 words. Using a reading speed of 238 words per minute, DHS estimates it will take approximately 2.9 hours to read and understand this rule.[221]

The estimated hourly total compensation for a HR specialist, in-house lawyer, and outsourced lawyer are $49.30, $103.98, and $179.28, respectively. The estimated opportunity cost of time for each of these filers to read and understand the rule are $142.97, $301.54, and $519.91, respectively.[222] The estimated total opportunity cost of time for 4,807 HR specialists to familiarize themselves with this rule is approximately $687,257.[223] The estimated total opportunity cost of time for 3,843 lawyers to familiarize themselves with this rule is approximately $1,158,818 if they are all in-house lawyers and $1,998,014 if they are all outsourced lawyers.[224] The estimated total opportunity costs of time for petitioners or their representatives to familiarize themselves with this rule ranges from $1,846,075 to $2,685,271.[225]

x. Estimated Total Costs to Petitioners

The monetized costs of this rule come from filing and complying with Form I–129, Form G–28, Form I–907, and Form ETA–9142–B–CAA–6, as well as contacting and refreshing recruitment efforts, posting notifications, filings to obtain a porting worker, and complying with audits. The estimated total cost to file Form I–129 and an accompanying Form G–28 ranges from $6,100,704 to $7,191,133, depending on the filer. The estimated total cost of filing Form I–907 ranges from $9,109,557 to $9,224,148, depending on the filer. The estimated total cost of filing and complying with Form ETA–9142–B–CAA–6 is $2,574,553. The estimated total cost of conducting additional recruitment is $932,362. The estimated total cost of the COVID–19 protection provision is approximately $1,891. The estimated cost of the portability provision ranges from $1,315,684 to $1,419,808, depending on the filer. The estimated total cost for employers to comply with audits is $207,060. The estimated total costs for petitioners or their representatives to familiarize themselves with this rule ranges from $1,846,075 to $2,685,271, depending on the filer. The estimated total cost of additional scrutiny is $19,375. The total estimated cost to petitioners ranges from $22,107,261 to $24,255,601, depending on the filer.[226]

b. Cost to the Federal Government

USCIS will incur costs related to the adjudication of petitions as a result of this TFR. DHS expects these costs to be recovered by the fees associated with the forms, which have been accounted for as a transfer from petitioners to USCIS and also serve as a proxy for the costs to the agency. The total filing fees associated with Form I–129 H–2B petitions are $3,845,440 and the total filing fees associated with premium processing are $8,857,500.[227] This is a total filing fee of $12,702,940.[228]

The INA provides USCIS with the authority for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs, and services provided without charge to certain applicants and petitioners.[229] DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (for example, facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. DHS anticipates some additional costs in adjudicating the additional petitions submitted because of the increase in cap limitation for H–2B visas.

Both DOL and DHS intend to conduct a significant number of audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule.[230] While most USCIS activities are funded through fees and DOL is funded through appropriations, it is expected that both agencies will be able to shift resources to be able to conduct these audits without incurring additional costs. As previously mentioned, the agencies will conduct a total of 350 audits and each audit is expected to take 12 hours. This results in a total time burden of 4,200 hours.[231] USCIS anticipates that a Federal employee at a GS–13 Step 5 salary will typically conduct these audits for each agency. The base hourly pay for a GS–13 Step 5 in the Washington, DC locality area is $58.01.[232] To estimate the total hourly

[220] Brysbaert, Marc (2019, April 12). 'How many words do we read per minute? A review and meta-analysis of reading rate.' *https://doi.org/10.31234/osf.io/xynwg* (accessed March 30, 2022). We use the average speed for silent reading of English nonfiction by adults.

[221] Calculation, Step 1: Roughly 41,000 words/238 words per minute = 172 (rounded) minutes.

Calculation, Step 2: 172 minutes/60 minutes per hour = 2.9 (rounded) hours.

[222] Calculation, HR Specialists: $49.30 estimated hourly total compensation for an HR specialist * 2.9 hours to read and become familiar with the rule = $142.97 (rounded) opportunity cost of time for an HR specialist to read and understand the rule.

Calculation, In-house lawyer: $103.98 estimated hourly total compensation for an in-house lawyer * 2.9 hours to read and become familiar with the rule = $301.54 (rounded) opportunity cost of time for an in-house lawyer to read and understand the rule.

Calculation, Outsourced lawyer: $179.28 estimated hourly total compensation for an outsourced lawyer * 2.9 hours to read and become familiar with the rule = $519.91 (rounded) opportunity cost of time for an outsourced lawyer to read and understand the rule.

[223] Calculation, HR specialists: $142.97 opportunity cost of time * 4,807 = $687,257 (rounded).

[224] Calculation for in-house lawyers: $301.54 opportunity cost of * 3,843 = $1,158,818 (rounded).

Calculation for outsourced lawyers: $519.91 opportunity cost of time * 3,843 = $1,998,014 (rounded).

[225] Calculation: $687,257 + $1,158,818 = $1,846,075.

Calculation: $687,257 + $1,998,014 = $2,685,271.

[226] Calculation of lower range: $6,100,704 + $9,109,557 + $2,574,553 + $932,362 + $1,891 + $1,315,684 + $207,060 + $1,846,075 + $19,375 = $22,107,261.

Calculation of upper range: $7,191,133 + $9,224,148 + $2,574,553 + $932,362 + $1,891 + $1,419,808 + $207,060 + $2,685,271 + $19,375 = $24,255,601.

[227] Calculation: 6,304 Form I–129 H–2B petitions * $610 in filing fee = $3,845,440.

Calculation: 5,905 premium processing requests * $1,500 in filing fees = $8,857,500.

[228] Calculation: $3,845,440 Form I–129 H–2B petition filing fees + $8,857,500 premium processing filing fee = $12,702,940 filing fees as a result of this rule.

[229] *See* INA section 286(m), 8 U.S.C. 1356(m).

[230] These audits are distinct from the WHD's authority to perform investigations regarding employers' compliance with the requirements of the H–2B program.

[231] Calculation: 12 hours to conduct an audit * 350 audits = 4,200 total hours to conduct audits.

[232] U.S. Office of Personnel Management, Pay and Leave, Salaries and Wages, For the Locality Pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA, 2022, Hourly Basic Rate, *https://*

Continued

compensation for these positions, we multiply the hourly wage ($58.01) by the Federal benefits to wage multiplier of 1.37.[233] This results in an hourly opportunity cost of time of $79.47 for GS–13 Step 5 Federal employees in the Washington, DC locality pay area.[234] The total opportunity costs of time for Federal workers to conduct audits is estimated to be $333,774.[235]

c. Benefits to Petitioners

The Departments assume that employers will incur the costs of this rule and other costs associated with hiring H–2B workers if the expected benefits of those workers exceed the expected costs. We assume that employers expect some level of net benefit from being able to hire additional H–2B workers. However, the Departments do not collect or require data from H–2B employers on the profits from hiring these additional workers to estimate this increase in net benefits.

The inability to access H–2B workers for some entities is currently causing irreparable harm or will cause their businesses to suffer irreparable harm in the near future. Temporarily increasing the number of available H–2B visas for this fiscal year may result in a cost savings, because it will allow some businesses to hire the additional labor resources necessary to avoid such harm. Preventing such harm may ultimately preserve the jobs of other employees (including U.S. workers) at that establishment. Additionally, returning workers are likely to be very familiar with the H–2B process and requirements, and may be positioned to begin work more expeditiously with these employers. Moreover, employers may already be familiar with returning workers as they have trained, vetted, and worked with some of these returning workers in past years. As such, limiting the supplemental visas to returning workers would assist employers that are suffering irreparable harm or will suffer impending irreparable harm.

d. Benefits to Workers

The Departments assume that workers will only incur the costs of this rule and other costs associated with obtaining a H–2B position if the expected benefits of that position exceed the expected costs. We assume that H–2B workers expect some level of net benefit from being able to work for H–2B employers. However, the Departments do not have sufficient data to estimate this increase in net benefits and lack the necessary resources to investigate this in a timely manner. This rule is not expected to impact wages because DOL prevailing wage regulations apply to all H–2B workers covered by this rule. Additionally, the RIA shows that employers incur costs in conducting additional recruitment of U.S. workers and attesting to irreparable harm from current labor shortfall. These costs suggest employers are not taking advantage of a large supply of foreign labor at the expense of domestic workers.

The existence of this rule will benefit the workers who receive H–2B visas. *See* Arnold Brodbeck et al., Seasonal Migrant Labor in the Forest Industry of the United States: The Impact of H–2B Employment on Guatemalan Livelihoods, 31 Society & Natural Resources 1012 (2018), and in particular this finding: ''Participation in the H–2B guest worker program has become a vital part of the livelihood strategies of rural Guatemalan families and has had a positive impact on the quality of life in the communities where they live. Migrant workers who were landless, lived in isolated rural areas, had few economic opportunities, and who had limited access to education or adequate health care, now are investing in small trucks, building roads, schools, and homes, and providing employment for others in their home communities . . . . The impact has been transformative and positive.''

Some provisions of this rule will benefit such workers in particular ways. The portability provision of this rule will allow nonimmigrants with valid H–2B visas who are present in the United States to transfer to a new employer more quickly and potentially extend their stay in the United States and, therefore, earn additional wages. Importantly, the rule will also increase information employees have about equal access to COVID–19 vaccinations and vaccine distribution sites. DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States. The current analysis does not seek to quantify or monetize costs or benefits that occur outside of the United States.

Note as well that U.S. workers will benefit in multiple ways. For example, the additional round of recruitment and U.S. worker referrals required by the provisions of this rule will ensure that a U.S. worker who is willing and able to fill the position is not displaced by a nonimmigrant worker. As noted, the avoidance of current or impending irreparable harm made possible through the granting of supplemental visas in this rule could ensure that U.S. workers—who otherwise may be vulnerable if H–2B workers were not given visas—do not lose their jobs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA. See 5 U.S.C. 603(a), 604(a). This temporary final rule is exempt from notice and comment requirements for the reasons stated above. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this temporary final rule. Accordingly, the Departments are not required to either certify that the temporary final rule would not have a significant economic impact on a substantial number of small entities nor conduct a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.[236] This rule is exempt from the written statement requirement because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, this rule does not exceed the $100 million in 1995 expenditure in any 1 year when adjusted for inflation ($178 million in 2021 dollars based on

www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf (last accessed March 30, 2022).

[233] Calculation, Step 1: $2,070,773 Full-time Permanent Salaries + $762,476 Civilian Personnel Benefits = $2,833,249 Compensation.

Calculation, Step 2: $2,833,249 Compensation /$2,070,773 Full-time Permanent Salaries = 1.37 (rounded) Federal employee benefits to wage ratio. *https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2021_Budget_Overview.pdf* (accessed March 30, 2022).

[234] Calculation: $58.01 hourly wage for a GS 13–5 in the Washington, DC locality area * 1.37 Federal employee benefits to wage ratio = $79.47 hourly opportunity cost of time for a GS 13–5 federal employee in the Washington, DC locality area.

[235] Calculation: 4,200 hours to conduct audits * $79.47 hourly opportunity cost of time = $333,774 total opportunity costs of time for Federal employees to conduct audits.

[236] See 2 U.S.C. 1532(a).

the Consumer Price Index for All Urban Consumers (CPI–U)),[237] and this rulemaking does not contain such a Federal mandate as ther term is defined under UMRA.[238] The requirements of Title II of the Act, therefore, do not apply, and the Departments have not prepared a statement under the Act.

E. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4729 (Feb. 5, 1996).

G. National Environmental Policy Act

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive (Dir) 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. The Instruction Manual, Appendix A, Table 1 lists Categorical Exclusions that DHS has found to have no such effect. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual, section V.B.2(a–c).

This rule temporarily amends the regulations implementing the H–2B nonimmigrant visa program to increase the numerical limitation on H–2B nonimmigrant visas for FY 2022 for positions with start dates on or after April 1, 2022 through September 30, 2022, based on the Secretary of Homeland Security's determination, in consultation with the Secretary of Labor, consistent with the FY 2022 Omnibus. It also allows H–2B beneficiaries who are in the United States to change employers upon the filing of a new H–2B petition and begin to work for the new employer for a period generally not to exceed 60 days before the H–2B petition is approved by USCIS.

DHS has determined that this rule clearly fits within categorical exclusion A3(d) because it interprets or amends a regulation without changing its environmental effect. The amendments to 8 CFR part 214 would authorize up to an additional 35,000 visas for noncitizens who may receive H–2B nonimmigrant visas, of which 23,500 are for returning workers (persons issued H–2B visas or were otherwise granted H–2B status in Fiscal Years 2019, 2020, or 2021). The proposed amendments would also facilitate H–2B nonimmigrants to move to new employment faster than they could if they had to wait for a petition to be approved. The amendment's operative provisions approving H–2B petitions under the supplemental allocation would effectively terminate after September 30, 2022 for the cap increase, and after January 24, 2023 for the portability provision. DHS believes amending applicable regulations to authorize up to an additional 35,000 H–2B nonimmigrant visas will not result in any meaningful, calculable change in environmental effect with respect to the current H–2B limit or in the context of a current U.S. population exceeding 331,000,000 (maximum temporary increase of 0.0106 percent).[239]

The amendment to applicable regulations is a stand-alone temporary authorization and not a part of any larger action, and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

H. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this temporary final rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective.[240] DHS will send this temporary final rule to Congress and to the Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

I. Paperwork Reduction Act

Attestation for Employers Seeking To Employ H–2B Nonimmigrants Workers Under Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103, Form ETA–9142–B–CAA–6

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval of a new form, Form ETA–9142B–CAA–6, using emergency clearance procedures outlined at 5 CFR 1320.13. The Departments note that while DOL

[237] *See* U.S. Department of Labor, BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' available at *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf* (last visited Jan. 13, 2022). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2021); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2021 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(270.970 − 152.383)/152.383] * 100 = (118.587/152.383) * 100 = 0.77821673 * 100 = 77.82 percent = 78 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.78 = $178 million in 2021 dollars.

[238] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

[239] U.S. Census Bureau Quick Facts, available at *https://www.census.gov/quickfacts/US* (accessed April 5, 2022).

Calculation: 35,000 additional visas/331,000,000 million people in the United States = 0.0106 (rounded) percent temporary increase in the population.

[240] Formally known as Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II (May 29, 1996).

submitted the ICR, both DHS and DOL will use the information provided by employers in response to this information collection.

Petitioners will use the new Form ETA–9142B–CAA–6 to make attestations regarding, for example, irreparable harm and the returning worker requirement (unless exempt because the H–2B worker is a national of one of the Northern Central American countries or Haiti who is counted against the 11,500 returning worker exemption cap) described above. Petitioners will need to file the attestation with DHS until it announces that the supplemental H–2B cap has been reached. In addition, the petitioner will need to retain all documentation demonstrating compliance with this implementing rule, and must provide it to DHS or DOL in the event of an audit or investigation.

In addition to obtaining immediate emergency approval, DOL is seeking comments on this information collection pursuant to 5 CFR 1320.13. Comments on the information collection must be received by July 18, 2022. This process of engaging the public and other Federal agencies helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The PRA provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. *See* 44 U.S.C. 3501 *et seq.* In addition, notwithstanding any other provisions of law, no person must generally be subject to a penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

In accordance with the PRA, DOL is affording the public with notice and an opportunity to comment on the new information collection, which is necessary to implement the requirements of this rule. The information collection activities covered under a newly granted OMB Control Number 1205–NEW are required under Section 204 of Division O of the FY 2022 Omnibus, which provides that ''the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2022 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,'' may increase the total number of noncitizens who may receive an H–2B visa in FY 2022 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation. As previously discussed in the preamble of this rule, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has decided to increase the numerical limitation on H–2B nonimmigrant visas to authorize the issuance of up to, but not more than, an additional 35,000 visas for FY 2022 for certain H–2B workers with start dates on or after April 1, 2022 through September 30, 2022, for U.S. businesses that attest that they are suffering irreparable harm or will suffer impending irreparable harm. As with the previous supplemental rules, the Secretary has determined that the additional visas will only be available for returning workers, that is workers who were issued H–2B visas or otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the worker is one of the 11,500 nationals of one of the Northern Central American countries and Haiti who are exempt from the returning worker requirement.

Commenters are encouraged to discuss the following:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- The burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

The aforementioned information collection requirements are summarized as follows:

Agency: DOL–ETA.

Type of Information Collection: Extension of an existing information collection.

Title of the Collection: Attestation for Employers Seeking to Employ H–2B Nonimmigrants Workers Under *Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103.*

Agency Form Number: Form ETA–9142–B–CAA–6.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 6,304.

Average Responses per Year per Respondent: 1.

Total Estimated Number of Responses: 6,304.

Average Time per Response: 9 hours per application.

Total Estimated Annual Time Burden: 56,736 hours.

Total Estimated Other Costs Burden: $0.

Request for Premium Processing Service, Form I–907

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. Form I–907, Request for Premium Processing Service, has been approved by OMB and assigned OMB control number 1615–0048. DHS is making no changes to the Form I–907 in connection with this temporary rule implementing the time-limited authority pursuant to *Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103* (which expires on September 30, 2022). However, USCIS estimates that this temporary rule may result in approximately 5,905 additional filings of Form I–907 in fiscal year 2022. The current OMB-approved estimate of the number of annual respondents filing a Form I–907 is 319,301. USCIS has determined that the OMB-approved estimate is sufficient to fully encompass the additional respondents who will be filing Form I–907 in connection with this temporary rule, which represents a small fraction of the overall Form I–907 population. Therefore, DHS is not changing the collection instrument or increasing its burden estimates in connection with this temporary rule and is not publishing a notice under the PRA or making revisions to the currently approved burden for OMB control number 1615–0048.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons discussed in the joint preamble, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

DEPARTMENT OF HOMELAND SECURITY

PART 214—NONIMMIGRANT CLASSES

■ 1. Effective May 18, 2022 through May 18, 2025, the authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 2. Effective May 18, 2022 through May 18, 2025, amend § 214.2 by adding paragraphs (h)(6)(xii) and (h)(28) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(6) * * *

(xii) *Special requirements for additional cap allocations under the Consolidated Appropriations Act, 2022, Public Law 117–103*—(A) *Public Law 117–103*—(*1*) *Supplemental allocation for returning workers.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2022 only, the Secretary has authorized up to an additional 23,500 visas for aliens who may receive H–2B nonimmigrant visas pursuant to section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103, based on petitions requesting FY 2022 employment start dates on or after April 1, 2022 through September 30, 2022. An alien may be eligible to receive an H–2B nonimmigrant visa under this paragraph (h)(6)(xii)(A)(*1*) if she or he is a returning worker. The term ''returning worker'' under this paragraph (h)(6)(xii)(A)(*1*) means a person who was issued an H–2B visa or was otherwise granted H–2B status in fiscal year 2019, 2020, or 2021. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(xii)(A)(*1*).

(*2*) *Supplemental allocation for nationals of Guatemala, El Salvador, Honduras (Northern Central American countries), or Haiti.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2022 only, and in addition to the allocation described in paragraph (h)(6)(xii)(A)(*1*) of this section, the Secretary has authorized up to an additional 11,500 aliens who are nationals of Guatemala, El Salvador, Honduras (Northern Central American countries), or of Haiti who may receive H–2B nonimmigrant visas pursuant to section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103, based on petitions with FY 2022 employment start dates on or after April 1, 2022 through September 30, 2022. Such workers are not subject to the returning worker requirement in paragraph (h)(6)(xii)(A)(*1*). Petitioners must request such workers in an H–2B petition that is separate from H–2B petitions that request returning workers under paragraph (h)(6)(xii)(A)(*1*) and must declare that they are requesting these workers in the attestation required under 20 CFR 655.66(a)(1). A petition requesting returning workers under paragraph (h)(6)(xii)(A)(*1*), which is accompanied by an attestation indicating that the petitioner is requesting nationals of Northern Central American countries or Haiti, will be rejected, denied or, in the case of a non-frivolous petition, will be approved solely for the number of beneficiaries that are from the Northern Central American countries or Haiti. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(xii)(A)(*2*).

(B) *Eligibility.* In order to file a petition with USCIS under this paragraph (h)(6)(xii), the petitioner must:

(*1*) Comply with all other statutory and regulatory requirements for H–2B classification, including, but not limited to, requirements in this section, under part 103 of this chapter, and under 20 CFR part 655 and 29 CFR part 503; and

(*2*) Submit to USCIS, at the time the employer files its petition, a U.S. Department of Labor attestation, in compliance with this section and 20 CFR 655.65, evidencing that:

(*i*) Its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to this paragraph (h)(6)(xii);

(*ii*) All workers requested and/or instructed to apply for a visa have been issued an H–2B visa or otherwise granted H–2B status in fiscal year 2019, 2020, or 2021, unless the H–2B worker is a national of Guatemala, El Salvador, Honduras, or Haiti who is counted towards the 11,500 cap described in paragraph (h)(6)(xii)(A)(*2*) of this section;

(*iii*) The employer will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site; and that the employer will notify any H–2B workers approved under the supplemental cap in paragraph (h)(6)(xii)(A)(*2*) of this section, in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites;

(*iv*) The employer will comply with obligations and additional recruitment requirements outlined in 20 CFR 655.65(a)(3) through (5);

(*v*) The employer will provide documentary evidence of the facts in paragraphs (h)(6)(xii)(B)(*2*)(*i*) through (*iv*) of this section to DHS or DOL upon request; and

(*vi*) The employer will agree to fully cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees

and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in paragraph (h)(6)(xii)(B) of this section, as a condition for the approval of the petition.

(*vii*) The employer must attest on Form ETA–9142–B–CAA–6 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in 20 CFR 655.65(a) and 655.66(a), as a condition for the approval of the H–2B petition. The employer must further attest on Form ETA–9142–B–CAA–6 that it will not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority pursuant to 20 CFR part 655, subpart A, and 29 CFR 503.25.

(C) *Processing.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xii)(A)(*1*) or (*2*) of this section that are received after the applicable numerical limitation has been reached or after September 15, 2022, whichever is sooner. USCIS will not approve a petition filed pursuant to this paragraph (h)(6)(xii) on or after October 1, 2022.

(D) *Numerical limitations under paragraphs (h)(6)(xii)(A)(1) and (2) of this section.* When calculating the numerical limitations under paragraphs (h)(6)(xii)(A)(*1*) and (*2*) of this section as authorized under Public Law 117–103, USCIS will make numbers for each allocation available to petitions in the order in which the petitions subject to the respective limitation are received. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions received (including the number of workers requested when necessary) and will notify the public of the dates that USCIS has received the necessary number of petitions (the ''final receipt dates'') under paragraph (h)(6)(xii)(A)(*1*) or (*2*). The day the public is notified will not control the final receipt dates. When necessary to ensure the fair and orderly allocation of numbers subject to the numerical limitations in paragraphs (h)(6)(xii)(A)(*1*) and (*2*), USCIS may randomly select from among the petitions received on the final receipt dates the remaining number of petitions deemed necessary to generate the numerical limit of approvals. This random selection will be made via computer-generated selection. Petitions subject to a numerical limitation not randomly selected or that were received after the final receipt dates that may be applicable under paragraph (h)(6)(xii)(A)(*1*) or (*2*) will be rejected. If the final receipt date is any of the first 5 business days on which petitions subject to the applicable numerical limits described in paragraph (h)(6)(xii)(A)(*1*) or (*2*) may be received (in other words, if either of the numerical limits described in paragraph (h)(6)(xii)(A)(*1*) or (*2*) is reached on any one of the first 5 business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those 5 business days.

(E) *Sunset.* This paragraph (h)(6)(xii) expires on October 1, 2022.

(F) *Non-severability.* The requirement to file an attestation under paragraph (h)(6)(xii)(B)(*2*) of this section is intended to be non-severable from the remainder of this paragraph (h)(6)(xii), including, but not limited to, the numerical allocation provisions at paragraphs (h)(6)(xii)(A)(*1*) and (*2*) of this section in their entirety. In the event that any part of this paragraph (h)(6)(xii) is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this paragraph (h)(6)(xii) is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this paragraph (h)(6)(xii), as consistent with law.

* * * * *

(28) *Change of employers and portability for H–2B workers.* (i) This paragraph (h)(28) relates to H–2B workers seeking to change employers during the time period specified in paragraph (h)(28)(iv) of this section. Notwithstanding paragraph (h)(2)(i)(D) of this section:

(A) An alien in valid H–2B nonimmigrant status whose new petitioner files a non-frivolous H–2B petition requesting an extension of the alien's stay on or after July 28, 2022, is authorized to begin employment with the new petitioner after the petition described in this paragraph (h)(28) is received by USCIS and before the new H–2B petition is approved, but no earlier than the start date indicated in the new H–2B petition; or

(B) An alien whose new petitioner filed a non-frivolous H–2B petition requesting an extension of the alien's stay before July 28, 2022 that remains pending on July 28, 2022, is authorized to begin employment with the new petitioner before the new H–2B petition is approved, but no earlier than the start date of employment indicated on the new H–2B petition.

(ii)(A) With respect to a new petition described in paragraph (h)(28)(i)(A) of this section, and subject to the requirements of 8 CFR 274a.12(b)(30), the new period of employment described in paragraph (h)(28)(i) of this section may last for up to 60 days beginning on the Received Date on Form I–797 (Notice of Action) or, if the start date of employment occurs after the I–797 Received Date, for a period of up to 60 days beginning on the start date of employment indicated in the H–2B petition.

(B) With respect to a new petition described in paragraph (h)(28)(i)(B) of this section, the new period of employment described in paragraph (h)(28)(i) of this section may last for up to 60 days beginning on the later of either July 28, 2022 or the start date of employment indicated in the H–2B petition.

(C) With respect to either type of new petition, if USCIS adjudicates the new petition before the expiration of this 60-day period and denies the petition, or if the new petition is withdrawn by the petitioner before the expiration of the 60-day period, the employment authorization associated with the filing of that petition under 8 CFR 274a.12(b)(30) will automatically terminate 15 days after the date of the denial decision or 15 days after the date on which the new petition is withdrawn. Nothing in this paragraph (h)(28) is intended to alter the availability of employment authorization related to professional H–2B athletes who are traded between organizations pursuant to paragraph (h)(6)(vii) of this section and 8 CFR 274a.12(b)(9).

(iii) In addition to meeting all other requirements in paragraph (h)(6) of this section for the H–2B classification, to commence employment and be approved under this paragraph (h)(28):

(A) The alien must either (1) have been in valid H–2B nonimmigrant status on or after July 28, 2022 and be the

beneficiary of a non-frivolous H–2B petition requesting an extension of the alien's stay that is received on or after July 28, 2022, but no later than January 24, 2023; or (2) be the beneficiary of a non-frivolous H–2B petition requesting an extension of the alien's stay that is pending as of July 28, 2022.

(B) The petitioner must comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws, laws related to COVID–19 worker protections, any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site; and

(C) The petitioner may not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority under 20 CFR part 655, subpart A, and 29 CFR 503.25.

(iv) Authorization to initiate employment changes pursuant to this paragraph (h)(28) begins at 12 a.m. on July 28, 2022, and ends at the end of January 24, 2023.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 4. Effective May 18, 2022 through May 18, 2025, amend § 274a.12 by adding paragraph (b)(31) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(32)(i) Pursuant to 8 CFR 214.2(h)(28) and notwithstanding 8 CFR 214.2(h)(2)(i)(D), an alien is authorized to be employed no earlier than the start date of employment indicated in the H–2B petition and no earlier than July 28, 2022, by a new employer that has filed an H–2B petition naming the alien as a beneficiary and requesting an extension of stay for the alien, for a period not to exceed 60 days beginning on:

(A) The later of the ''Received Date'' on Form I–797 (Notice of Action) acknowledging receipt of the petition, or the start date of employment indicated on the new H–2B petition, for petitions filed on or after July 28, 2022; or

(B) The later of July 28, 2022 or the start date of employment indicated on the new H–2B petition, for petitions that are pending as of July 28, 2022.

(ii) If USCIS adjudicates the new petition prior to the expiration of the 60-day period in paragraph (b)(32)(i) of this section and denies the new petition for extension of stay, or if the petitioner withdraws the new petition before the expiration of the 60-day period, the employment authorization under this paragraph (b)(32) will automatically terminate upon 15 days after the date of the denial decision or the date on which the new petition is withdrawn. Nothing in this section is intended to alter the availability of employment authorization related to professional H–2B athletes who are traded between organizations pursuant to paragraph (b)(9) of this section and 8 CFR 214.2(h)(6)(vii).

(iii) Authorization to initiate employment changes pursuant to 8 CFR 214.2(h)(28) and paragraph (b)(32)(i) of this section begins at 12 a.m. on July 28, 2022, and ends at the end of January 24, 2023.

* * * * *

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

20 CFR Chapter V

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 5. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Public Law 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Public Law 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 6. Effective May 18, 2022 through September 30, 2022, add § 655.65 to read as follows:

§ 655.65 Special application filing and eligibility provisions for Fiscal Year 2022 under the May 18, 2022 supplemental cap increase.

(a) An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(xii) to request H–2B workers with FY 2022 employment start dates on or after April 1, 2022 and no later than September 30, 2022, must meet the following requirements:

(1) The employer must attest on the Form ETA–9142–B–CAA–6 that its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xii). Additionally, the employer must attest that it will provide documentary evidence of the applicable irreparable harm to DHS or DOL upon request.

(2) The employer must attest on Form ETA–9142–B–CAA–6 that each of the workers requested and/or instructed to apply for a visa, whether named or unnamed, on a petition filed pursuant to 8 CFR 214.2(h)(6)(xii), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2019, 2020, or 2021), unless the H–2B worker is a national of Guatemala, El Salvador, Honduras, or Haiti and is counted towards the 11,500 cap described in 8 CFR 214.2(h)(6)(xii)(A)(*2*).

(3) The employer must attest on Form ETA–9142–B–CAA–6 that the employer will comply with all the assurances, obligations, and conditions of employment set forth on its approved *Application for Temporary Employment Certification.*

(4) The employer must attest on Form ETA–9142–B–CAA–6 that it will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to

reimbursement for travel to and from the nearest available vaccination site; and that the employer will notify any H–2B workers approved under the supplemental cap in 8 CFR 214.2(h)(6)(xii)(A)(*1*) and (*2*), in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites.

(5) An employer that submits Form ETA–9142B–CAA–6 and the I–129 petition 30 or more days after the certified start date of work, as shown on its approved *Application for Temporary Employment Certification,* must conduct additional recruitment of U.S. workers as follows:

(i) Not later than the next business day after submitting the I–129 petition for H–2B worker(s), the employer must place a new job order for the job opportunity with the State Workforce Agency (SWA), serving the area of intended employment. The employer must follow all applicable SWA instructions for posting job orders, inform the SWA that the job order is being placed in connection with a previously certified *Application for Temporary Employment Certification* for H–2B workers by providing the unique temporary labor certification (TLC) identification number, and receive applications in all forms allowed by the SWA, including online applications (sometimes known as ''self-referrals''). The job order must contain the job assurances and contents set forth in § 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days;

(ii) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact, by email or other available electronic means, the nearest comprehensive American Job Center (AJC) serving the area of intended employment where work will commence, request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and provide the unique identification number associated with the job order placed with the SWA or, if unavailable, a copy of the job order. If a comprehensive AJC is not available, the employer must contact the nearest affiliate AJC serving the area of intended employment where work will commence to satisfy the requirements of this paragraph (a)(5)(ii);

(iii) Where the occupation or industry is traditionally or customarily unionized, during the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact (by mail, email or other effective means) the nearest American Federation of Labor and Congress of Industrial Organizations office covering the area of intended employment and provide written notice of the job opportunity, by providing a copy of the job order placed pursuant to (a)(5)(i) of this section, and request assistance in recruiting qualified U.S. workers for the job;

(iv) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact (by mail or other effective means) its former U.S. workers, including those who have been furloughed or laid off, during the period beginning January 1, 2020, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(xii) is submitted, who were employed by the employer in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite), disclose the terms of the job order, and solicit their return to the job. The contact and disclosures required by this paragraph (a)(5)(iv) must be provided in a language understood by the worker, as necessary or reasonable;

(v) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must engage in the recruitment of U.S. workers as provided in § 655.45(a) and (b). The contact and disclosures required by this paragraph (a)(5)(v) must be provided in a language understood by the worker, as necessary or reasonable; and

(vi) The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until the date on which the last H–2B worker departs for the place of employment, or 30 days after the last date on which the SWA job order is posted, whichever is later. Consistent with § 655.40(a), applicants can be rejected only for lawful job-related reasons.

(6) The employer must attest on Form ETA–9142–B–CAA–6 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification, or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in this paragraph (a) and § 655.66(a), as a condition for the approval of the H–2B petition. Pursuant to this subpart and 29 CFR 503.25, the employer will not impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority.

(b) This section expires on October 1, 2022.

(c) The requirements under paragraph (a) of this section are intended to be non-severable from the remainder of this section; in the event that paragraph (a)(1), (2), (3), (4), or (5) of this section is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this section is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this part, as consistent with law.

■ 7. Effective May 18, 2022 through September 30, 2025, add § 655.66 to read as follows:

§ 655.66 Special document retention provisions for Fiscal Years 2022 through 2026 under the Consolidated Appropriations Act, 2022.

(a) An employer that files a petition with USCIS to employ H–2B workers in fiscal year 2022 under authority of the temporary increase in the numerical limitation under section 204 of Division O, Public Law 117–103 must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I–129 petition, that the employer's business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xii);

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(xii), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2019, 2020, or 2021), unless the H–2B worker(s) is a national of El Salvador, Guatemala,

Honduras, or Haiti and is counted towards the 11,500 cap described in 8 CFR 214.2(h)(6)(xii)(A)(*2*). Alternatively, if applicable, employers must maintain documentary evidence that the workers the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, Honduras, or Haiti as defined in 8 CFR 214.2(h)(6)(xii)(A)(*2*); and

(4) If applicable, proof of recruitment efforts set forth in § 655.65(a)(5)(i) through (v) and a recruitment report that meets the requirements set forth in § 655.48(a)(1) through (4) and (7), and maintained throughout the recruitment period set forth in § 655.65(a)(5)(vi).

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2025.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Martin J. Walsh,

Secretary, U.S. Department of Labor.

[FR Doc. 2022–10631 Filed 5–16–22; 4:15 pm]

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Part III

The President

Presidential Determination No. 2022–12 of May 12, 2022—Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

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Title 3—

The President

Presidential Determination No. 2022–12 of May 12, 2022

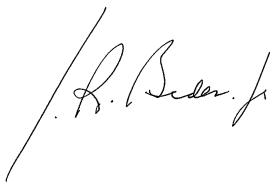
Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration, including the report submitted in April 2022, and other relevant factors, including global economic conditions, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will continue to monitor this situation closely.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, May 12, 2022

[FR Doc. 2022–10840
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