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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2022–0070]

Intent To Make Preemption Determination Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notification of intent to make preemption determination; request for comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) has received a written request to make a determination that the Truth in Lending Act (TILA) preempts a New York State commercial financing law with respect to certain provisions. The CFPB is publishing this notification of intent to make a preemption determination about that law and has made a preliminary conclusion that this law is not preempted by TILA. The CFPB is also providing notice that it is considering whether to make a preemption determination regarding State laws in California, Utah, and Virginia that are potentially similar to the New York law. The CFPB is soliciting public comment pursuant to Regulation Z.

DATES: Comments must be received on or before January 20, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2022–0070, by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: 2022-TILAPreemption@cfpb.gov.* Include Docket No. CFPB–2022–0070 in the subject line of the message.
3. *Mail/Hand Delivery/Courier:* Comment Intake—TILA Preemption Determination, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* Comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions in response to this notification, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joel Singerman, Senior Counsel, Office of Regulations, or Christopher Shelton or Anand Das, Senior Counsels, Legal Division, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Background on TILA and Reg Z Preemption Provisions

The CFPB has received a request to make a preemption determination involving certain disclosure provisions in TILA. Congress enacted TILA in 1968 because it found that ''competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.'' [1] TILA is designed to ''assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' [2] TILA requires creditors to use specified formulas to determine credit costs and to provide cost disclosures to consumers before consummation of ''consumer credit'' transactions,[3] which is credit that is ''offered or extended . . . primarily for personal, family, or household purposes.'' [4] Regulation Z implements TILA.[5]

TILA does not ''annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of [TILA], and then only to the extent of the inconsistency.'' [6] TILA authorizes the CFPB to determine whether any inconsistency exists between chapters 1, 2, and 3 of TILA and State laws.[7] Regulation Z provides that ''[a] State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law.'' [8]

Accordingly, TILA does not preempt the field, and State disclosures are entirely compatible with Federal disclosures under TILA and Regulation Z, with the narrow exception of when they are ''contradictory.'' The Board of Governors of the Federal Reserve System (Board), which formerly administered Regulation Z, framed the standard as follows: ''A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the federal law or interferes with the purposes of the federal statute.'' [9] The Board noted that Regulation Z articulated two categories of ''contradictory'' State laws: ''A state law is contradictory if it requires the use of the same term to represent a different

[1] 15 U.S.C. 1601(a).

[2] *Id.*

[3] *See* 15 U.S.C. 1637(a), 1637a, 1638(a) (requiring disclosures for ''consumer credit'' transactions); *but see* 12 CFR 1026.12(a) (prohibiting the issuance of credit cards in certain circumstances, even if the credit card is to be used primarily for a business purpose).

[4] *See* 15 U.S.C. 1602(i) (defining ''consumer'' credit to mean, in part, credit ''primarily for personal, family, or household purposes''); *see also* 12 CFR 1026.2(a)(12).

[5] *See generally,* 12 CFR 1026.1, *et seq.*

[6] 15 U.S.C. 1610(a)(1).

[7] *Id.*

[8] 12 CFR 1026.28(a)(1).

[9] 48 FR 4454, 4455 (Feb. 1, 1983); 50 FR 25068 (June 17, 1985); 53 FR 3332 (Feb. 5, 1988); 55 FR 13282 (Apr. 10, 1990); 55 FR 42025, 42026 (Oct. 17, 1990).

amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item.''[10] At the same time, the Board noted that these two categories were not entirely exhaustive, because they would not be apt in a context where the preemption issue at hand does not ''deal with disclosures of terms and amounts.''[11] The CFPB is considering whether it should clarify the Board's articulation of the applicable preemption standard, and it requests comment on how the CFPB should articulate the standard for preemption in this and future determinations.

TILA authorizes the CFPB to make a determination of whether a State law requirement is preempted, upon its own motion or upon the request of a creditor, State, or other interested party.[12] Regulation Z implements this provision in TILA.[13] Requests for preemption determinations must be submitted in accordance with appendix A to Regulation Z.[14] Appendix A also sets forth processes the CFPB must follow in issuing preemption determinations, either on request or on its own motion.[15]

In addition, section 554(e) of the Administrative Procedure Act authorizes any agency, in its sound discretion, to issue a declaratory order to terminate a controversy or remove uncertainty.[16] Section 554(e) of the Administrative Procedure Act provides an additional, independent source of authority for this proceeding.

The Preemption Request

The CFPB received a request from a business trade association asking it to determine that TILA preempts certain provisions in New York State's Commercial Financing Law, sec. 801 *et seq.* (the New York law).[17] The request is available as supporting and related material for this proceeding on *Regulations.gov.* Similar to TILA, the New York law requires financial disclosures before consummation of covered transactions, although it applies to ''commercial financing'' instead of consumer credit. It requires providers[18] to issue disclosures when ''extending a specific offer'' for various types of commercial financing.[19]

The request asserted that TILA preempts the New York law with respect to its use of the terms ''finance charge'' and ''annual percentage rate'' (APR), notwithstanding that the statutes govern different categories of transactions. Both statutes require these disclosures: TILA requires creditors to disclose information about ''finance charges'' and ''APRs'' before consummation of open- and closed-end consumer credit transactions,[20] while the New York law requires providers to disclose information about ''finance charges'' and ''APRs'' or ''estimated APRs'' for various types of commercial financing.[21]

In addition to acknowledging that, unlike TILA, the New York law governs commercial transactions, the request focused on what it alleged are material differences between how the State and Federal law use the terms ''finance charge'' and ''APR,'' and alleged that these differences make the New York law inconsistent with Federal law for purposes of preemption.[22] For example, the request noted that the New York law defines ''finance charge'' to include any charge imposed by a ''provider,'' which includes ''a person who solicits and presents specific offers of commercial financing on behalf of a third party.''[23] The request stated that the definition is broader than the Federal definition, under which the requester asserted a ''finance charge'' for non-mortgage transactions includes certain broker fees only if the creditor requires the use of the broker.

Additionally, the request asserted that the ''estimated APR'' disclosure that the New York law requires for certain transactions is less precise than the APR calculation under TILA and Regulation Z, and that the New York law requires certain assumptions about payment amounts and payment frequencies in order to calculate APR and estimated APR, whereas TILA does not require similar assumptions. The request also asserted that the New York law requires providers to calculate APRs for open-end transactions using TILA's closed-end APR requirements instead of TILA's open-end APR requirements.

The request stated that these types of differences could lead to variances in the disclosures required under State and Federal law. The request asserted that the Federal law and regulation therefore preempt the New York law. The request pointed to administrative precedent[24]

[10] 12 CFR 1026.28(a)(1).

[11] 48 FR 4454, 4455 (Feb. 1, 1983). Additionally, the Board articulated the following principles: (1) for purposes of making preemption determinations, State law is deemed to require the use of specific terminology in the State disclosures if the State statute uses certain terminology in the disclosure provision; (2) a State disclosure does not ''describe the same item'' under Regulation Z, § 1026.28(a)(1) if the State disclosure ''is not the functional equivalent of a Federal disclosure;'' and (3) preemption occurs only where an actual inconsistency exists between the State and Federal laws. *See* 48 FR 4454, 4455 (Feb. 1, 1983). The Board did not explicitly mention these principles in every preemption determination, but it did reference them from time to time. *See, e.g.,* 50 FR 8737 (Mar. 5, 1985); 55 FR 13282 (Apr. 10, 1990).

[12] 15 U.S.C. 1610(a)(2).

[13] *See* 12 CFR 1026.28(a)(1).

[14] 12 CFR part 1026, app. A.

[15] *See id.*

[16] 5 U.S.C. 554(e).

[17] Letter from Stephen Denis, CEO of the Small Business Finance Association, to Jocelyn Sutton, Executive Secretary of the Consumer Financial Protection Bureau (Jan. 15, 2021). The New York law is available at *https://www.nysenate.gov/legislation/laws/FIS/A8.*

[18] The New York law defines ''provider'' to mean, in part, ''a person who extends a specific offer of commercial financing to a recipient'' and, unless otherwise exempt, ''a person who solicits and presents specific offers . . . on behalf of a third party.'' *See* N.Y. Comm. Fin. Law, sec. 801(h).

[19] *See generally,* N.Y. Comm. Fin. Law, secs. 803 (sales-based financing disclosures), 804 (closed-end commercial financing disclosures), 805 (open-end commercial financing disclosures), 806 (factoring transaction disclosures), and 807 (disclosures for other forms of commercial financing).

[20] *See, e.g.,* 15 U.S.C. 1637(a), 1637a, 1638(a) (setting forth requirements for open-end transactions, open-end transactions secured by a principal dwelling, and closed-end transactions, respectively); *see also* 12 CFR 1026.6, 1026.40 (open-end transactions), and 1026.18, 1026.37(l), 1026.38(o) (closed-end transactions).

[21] *See generally,* N.Y. Comm. Fin. Law, secs. 803 (sales-based financing disclosures), 804 (closed-end commercial financing disclosures), 805 (open-end commercial financing disclosures), 806 (factoring transaction disclosures), and 807 (disclosures for other forms of commercial financing).

[22] The request also acknowledged similarities between the State and Federal law. Both Regulation Z and the New York law state that ''finance charge'' means ''the cost of [financing] as a dollar amount. It includes any charge payable directly or indirectly by the [recipient] and imposed directly or indirectly by the [issuer] as an incident to or a condition of the extension of [financing].'' *See* Regulation Z, 12 CFR 1026.4(a); N.Y. Comm. Fin. Law, sec. 801(e). Further, the New York law specifically refers to Regulation Z in defining ''finance charge'' and ''APR.'' It states that the term finance charge ''includes all charges that would be included under 12 CFR 1026.4 as if the transaction were subject to'' that provision. N.Y. Comm. Fin. Law, sec. 801(e). And it states that the terms ''APR'' and ''estimated APR'' must, among other things, be calculated in accordance with the Federal Truth in Lending Act and Regulation Z, ''regardless of whether such act or such regulation would require such a calculation.'' *See* N.Y. Comm. Fin. Law, secs. 803(c), 806(c) (governing ''estimated APR'' disclosure for sales-based commercial financing and factoring transactions, respectively); secs. 804(c), 805(c), and 807(c) (governing ''APR'' disclosure for closed-end commercial financing, open-end commercial financing, and other commercial financing not covered by categories, respectively).

[23] *See* N.Y. Comm. Fin. Law, sec. 801(e), (h) (sec. 801(e) defines ''finance charge,'' and sec. 801(h) defines ''provider'').

[24] The request pointed to a TILA preemption determination that the Board issued in 1982, in which the Board stated that State laws requiring finance charge or APR disclosures will face greater scrutiny because the terms are so significant under TILA. As the request noted, the Board stated in that publication, ''since these disclosures are particularly significant, any contradiction in of the corresponding federal disclosure would interfere with the intent of the federal scheme.'' *See* 47 FR 16202 (Apr. 15, 1982).

and Regulation Z commentary [25] to support this conclusion.

The request also asserted that the New York law impedes the operation of Federal law or interferes with the intent of the Federal scheme, even if it does not contradict TILA in the specific manner described in Regulation Z. The request asserted that failing to enforce TILA's definitions of ''finance charge'' and ''APR,'' even across different financing types, would impede and degrade the benefits of ensuring uniform disclosures, which aid consumer understanding and enable consumers to effectively compare financing options. The request asserted that the inconsistencies between TILA and the New York law could lead to confusion or misunderstanding among borrowers, including small business owners who may use both consumer credit and commercial financing to fund business expenses.

Preliminary Preemption Analysis

The CFPB has decided to initiate a proceeding to make a preemption determination regarding the New York law in response to the request. In evaluating the request concerning the New York law, the CFPB also became aware of similar laws in other States. The CFPB is, on its own motion, providing notice that it may make preemption determinations regarding potentially similar State laws in California,[26] Utah,[27] and Virginia [28] as part of this proceeding.

Beginning with the New York law, the CFPB's preliminary view is that TILA does not preempt the New York law on the grounds the request asserts. That is, the State and Federal laws do not appear ''contradictory'' for preemption purposes.

The Bureau notes that the statutes govern different transactions, so the New York law appears to be far afield of a law that contradicts TILA and Regulation Z. TILA requires creditors to disclose the finance charge and APR only for ''consumer credit'' transactions, which the statute defines as credit that is ''primarily for personal, family, or household purposes.'' [29] The New York law, on the other hand, requires the disclosures only for ''commercial financing,'' specifically defined as financing ''the proceeds of which the recipient *does not intend to use primarily for personal, family, or household purposes.*'' [30]

The Bureau preliminarily disagrees with the request that the New York law significantly impedes the operation of TILA or interferes with the purposes of the Federal scheme. As relevant here, a primary purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to the consumer and avoid the uninformed use of credit.[31] The differences between the New York and Federal disclosure requirements do not frustrate these purposes because lenders are not required to provide the New York disclosures to consumers seeking consumer credit. Consumers applying for consumer credit should continue receiving only TILA disclosures, which, as normal, will assure meaningful disclosure of credit terms and allow the consumers to compare like products when shopping for financing options.

Based on the foregoing, the CFPB's preliminary interpretation is that TILA does not preempt the New York law's use of the terms ''finance charge,'' ''APR,'' or ''estimated APR.''

As noted above, the CFPB is also considering making determinations regarding whether TILA preempts State laws in California,[32] Utah,[33] and Virginia [34] that prescribe disclosures in certain commercial transactions. The CFPB has conducted a preliminary review of these laws, which are similar in relevant respects to the New York law because they do not apply to consumer credit transactions that are within the scope of TILA. Accordingly, the CFPB's preliminary conclusion is that TILA does not preempt these State laws. As an additional potential basis—but not necessary to the Bureau's preliminary conclusion—the Bureau notes that several of these laws do not appear to require use the terms ''finance charge'' or ''APR'' in a manner that would be different than TILA and Regulation Z if they were applicable. The CFPB encourages commenters to provide information about any relevant differences in these State laws that would affect the CFPB's preemption analysis and final determination with respect to them. The Bureau's focus on and preliminary conclusion about these State laws is not intended to indicate or imply anything about the laws of any other States.

Conclusion

In light of the foregoing, the CFPB is publishing this notification of its intent to make a preemption determination and solicit comment from the public. After the comment period closes, the CFPB will consider any comments and publish a notification of final determination in the **Federal Register**.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–27059 Filed 12–14–22; 8:45 am]

BILLING CODE 4810–AM–P

[25] The request referred to comment 28(a)–2, which clarifies that ''a State law'' is inconsistent for purposes of preemption if it uses ''finance charge'' to include fees beyond Federal law or requires a different label for ''APR.'' The request asserted that the reference to ''a State law'' was intentionally broad—that, because ''finance charge'' and ''APR'' are central to TILA and Regulation Z's disclosure regime, the commentary was intended to clarify the limitations of finance charges and APRs without limitation to any particular type of State law. The request asserted that this was intended to protect the value of the terms under Federal law.

[26] Cal. Fin. Code secs. 22800 to 22805; Cal. Code Regs. tit. 10, ch. 3, subch. 3.

[27] Utah Code Ann. secs. 7–27–101 to 7–27–301.

[28] Va. Code Ann. secs. 6.2–2228 to 6.2–2238; 10 Va. Admin. Code secs. 5–240–10 to 5–240–40.

[29] *See* 15 U.S.C. 1602(i) (defining ''consumer'' credit to mean, in part, credit ''primarily for personal, family, or household purposes''); *see also* 15 U.S.C. 1637(a), 1637a, 1638(a) (requiring disclosures for ''consumer credit'' transactions); *but see* 12 CFR 1026.12(a) (prohibiting the issuance of credit cards in certain circumstances, even if the credit card is to be used primarily for a business purpose).

[30] N.Y. Comm. Fin. Law, sec. 801(b) (emphasis added). The request does not argue that any single transaction can be subject to both New York and TILA disclosure requirements, and the New York Department of Financial Services has proposed a regulatory provision that would explicitly provide that commercial financing ''does not include any transaction that is subject to the [Federal TILA], for which a disclosure is provided that is compliant with such Act.'' Revised Proposal by the New York Department of Financial Services to add 23 NYCRR 600 (Aug. 26, 2022).

[31] *See* 15 U.S.C. 1601(a).

[32] Cal. Fin. Code secs. 22800 to 22805; Cal. Code Regs. tit. 10, ch. 3, subch. 3.

[33] Utah Code Ann. secs. 7–27–101 to 7–27–301.

[34] Va. Code Ann. secs. 6.2–2228 to 6.2–2238; 10 Va. Admin. Code secs. 5–240–10 to 5–240–40.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1584; Project Identifier MCAI–2022–01522–R; Amendment 39–22281; AD 2022–26–03]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AW169 helicopters. This AD was prompted by a report of a protruding pushbutton screw (screw) on a cockpit door internal handle resulting in an interference with

the collective stick travel. This AD requires inspecting each screw and depending on the results, modifying the cockpit door handle and reporting information, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits installing an affected door handle assembly unless certain actions are accomplished. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective December 30, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2022.

The FAA must receive comments on this AD by January 30, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1584; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the IBR material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–1584.

Other Related Service Information: For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* This service information is also available at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Michael Hughlett, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *michael.hughlett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0233–E, dated November 30, 2022 (EASA AD 2022–0233–E), to correct an unsafe condition for Leonardo S.p.A. Helicopters, formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Model AW169 helicopters, all serial numbers.

This AD was prompted by a report of a protruding screw on the left-hand (LH) cockpit door internal handle resulting in an interference with the collective stick travel. The FAA is issuing this AD to address a discrepancy with the screw. The unsafe condition, if not addressed, could result in reduced collective stick authority and subsequent reduced control of the helicopter. See EASA AD 2022–0233–E for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0233–E requires a one-time inspection of the LH and right-hand (RH) pilot and co-pilot door handle assemblies having part number (P/N) 4F5211A02331 for marking of green paint on the screw. If no green paint is found during the inspection, EASA AD 2022–0233–E requires inspecting the condition and torque of the screw and modifying the cockpit door handle. Depending on the results of the inspection, EASA AD 2022–0233–E also requires reporting any discrepancy or loose screw to Leonardo Helicopters. Additionally, EASA AD 2022–0233–E prohibits installing a pilot and co-pilot door handle assembly P/N 4F5211A02331 unless certain requirements are met.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Emergency Alert Service Bulletin No. 169–228, dated November 29, 2022. This service information specifies procedures for inspecting the screw head installed on the LH and RH door handle assemblies for green paint. If there is no green paint, this service information specifies procedures for inspecting the condition of the screw and inspecting the screw for proper tightening. If there are any anomalies or a loose screw, this service information specifies reporting the finding to Product Support Engineering. This service information also specifies procedures to modify the door handle assembly by applying a sealing compound, applying torque, and painting the screw head green.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Italy, EASA, its technical representative, has notified the FAA of the unsafe condition described in its emergency AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0233–E, described previously, as IBRed, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0233–E is IBRed in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2022–0233–E in its entirety through that incorporation, except for any differences identified as

exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0233–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0233–E. Service information referenced in EASA AD 2022–0233–E for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1584 after this final rule is published.

Differences Between This AD and the EASA AD

The service information referenced in EASA AD 2022–0233–E specifies checking the screw for condition and proper tightening, and if there are any anomalies or loose screws, reporting the finding to Product Support Engineering. This AD requires inspecting the screw for a discrepancy, which may be indicated by a protruding screw head, improper torque, or a loose screw. If there is any discrepancy, this AD requires replacing the screw with an airworthy screw.

EASA AD 2022–0233–E specifies reporting inspection results within 7 days after completing an inspection that detects any discrepancy or loose screw, whereas this AD requires reporting those inspection results within 10 days after completing the inspection, if the inspection was done on or after the effective date of this AD; or reporting those inspection results within 10 days after the effective date of this AD, if the inspection was done before the effective date of this AD. Additionally, for the purposes of this AD, a discrepancy may be indicated by a protruding screw head, improper torque, or loose screw.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because when an affected component fails, the proximity of the affected component could create interference with part of an assembly that is critical to the control of a helicopter. This unsafe condition may currently exist in other helicopters and consequences of this unsafe condition could occur during any phase of flight without any previous indications. In addition, the compliance time for the initial inspection is within 13 hours time-in-service or 30 days, whichever occurs first after the effective date of this AD, which is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1584; Project Identifier MCAI–2022–01522–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Michael Hughlett, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *michael.hughlett@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 11 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting each screw head for green paint takes a minimal amount of time for a nominal cost.

If required, inspecting a non-painted screw and modifying the door handle assembly takes about 0.5 work-hour for an estimated cost of $43 per door handle assembly.

If required, replacing a screw with an airworthy screw takes a minimal amount of time and has a nominal parts cost.

If required, reporting information takes about 1 work-hour for an estimated cost of $85.

Paperwork Reduction Act

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

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–26–03 Leonardo S.p.a.: Amendment 39–22281; Docket No. FAA–2022–1584; Project Identifier MCAI–2022–01522–R.

(a) Effective Date

This airworthiness directive (AD) is effective December 30, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AW169 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 5200, Doors.

(e) Unsafe Condition

This AD was prompted by a report of a protruding pushbutton screw (screw) on the left-hand cockpit door internal handle resulting in an interference with the collective stick travel. The FAA is issuing this AD to address a discrepancy with the screw. The unsafe condition, if not addressed, could result in reduced collective stick authority and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency Emergency AD 2022–0233–E, dated November 30, 2022 (EASA AD 2022–0233–E).

(h) Exceptions to EASA AD 2022–0233–E

(1) Where EASA AD 2022–0233–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0233–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2022–0233–E specifies "check for condition and proper tightening of the cockpit door handle screw. In case of any anomalies or screw loose, report the finding to Product Support Engineering;" for this AD, replace that text with "inspect the screw for a discrepancy, which may be indicated by a protruding screw head, improper torque, or loose screw. If there is any discrepancy, before further flight, replace the screw with an airworthy screw." Inspection results are still required to be reported in accordance with paragraph (3) of EASA AD 2022–0233–E.

(4) Where paragraph (3) of EASA AD 2022–0233–E specifies reporting inspection results to Leonardo S.p.a. within 7 days after completing an inspection that detects any discrepancy or loose screw, this AD requires reporting those inspection results at the applicable compliance time in paragraph (h)(4)(i) or (ii) of this AD. Additionally, for the purposes of this AD, a discrepancy may be indicated by a protruding screw head, improper torque, or loose screw.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after completing the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(5) This AD does not adopt the Remarks paragraph of EASA AD 2022–0233–E.

(i) Special Flight Permit

Special flight permits are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Michael Hughlett, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *michael.hughlett@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2022–0233–E, dated November 30, 2022.

(ii) [Reserved]

(3) For EASA Emergency AD 2022–0233–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–27296 Filed 12–13–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0940; Airspace Docket No. 21–ASO–26]

RIN 2120–AA66

Amendment and Removal of VOR Federal Airways in the Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies five VHF Omnidirectional Range (VOR) Federal airways, and removes one airway. This action supports the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0940 in the **Federal Register** (87 FR 50019; August 15, 2022). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in, and removed from FAA Order JO 7400.11.

Difference From the NPRM

The NPRM stated that the amended starting point for VOR Federal airway V–379 would be defined by an intersection of the Westminster, MD 167°(T)/175°(M) and the Smyrna, DE 242°(T)/251°(M) radials (the BUKYY, MD intersection). This was an error. The correct starting point is the intersection of the Westminster, MD 153°(T)/161°(M) and the Smyrna, DE 242°(T)/251°(M) radials (the DEALE, MD intersection). The new starting point is located along the current V–379 centerline, so it does not affect the alignment of the airway.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying VOR Federal airways V–67, V–159, V–185, V–209, and V–379; and removing airway V–541. The route changes are described below.

V–67: V–67 consists of two parts: From Choo Choo, TN, to Shelbyville, TN; and From the intersection of the Centralia, IL 010° and the Vandalia, IL 162° radials, to Rochester, MN. This rule removes the first part of the route. The second part of the route is unaffected.

V–159: V–159 consists of two parts: From Virginia Key, FL to Vulcan, AL; and From Holly Springs, MS to Omaha, IA. This change removes Tuskegee, AL from the first part of the route. In place of Tuskegee, the existing KENTT Intersection is added to the route description. The KENTT Intersection is defined by the intersection of the Eufaula, AL 320° and the Vulcan, AL 139° radials. This change does not affect the alignment of V–159. Existing United States Area Navigation (RNAV) route T–239 overlays V–159 from Vulcan, AL, to Pecan, GA. As amended, V–159 extends from Virginia Key, FL to Vulcan, AL; and From Holly Springs, MS to Omaha, IA.

V–185: V–185 extends from Savannah, GA, to Volunteer, TN. This action removes Greenwood, SC, and Sugarloaf Mountain, NC, from the route. As amended, V–185 consists of two parts: From Savannah, GA, to Colliers, SC; and From Snowbird, TN, to Volunteer, TN.

V–209: V–209 consists of two parts: From Semmes, AL, to the intersection of the of the Semmes 356° and the Eaton, MS 080° radials; and From the intersection of the Bigbee, MS 139° and the Brookwood, AL 230° radials, to

Choo Choo, TN. This action terminates the second part of the route at Gadsden, AL, and removes the segment from Gadsden to Choo Choo, TN.

As amended, V–209 extends From Semmes, AL, to the intersection of the Semmes 356° and the Eaton, MS 080° radials; and From the intersection of the Bigbee, MS 139° and the Brookwood, AL 230° radials, to Gadsden, AL.

V–379: V–379 extends from Nottingham, MD, to Smyrna, DE. This action removes the Nottingham VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC) from the route and sets the starting point of the route at an intersection defined by radials from the Westminster, MD (EMI), VORTAC, and the Smyrna, DE (ENO), VORTAC (the DEALE, MD intersection). As amended, V–379 extends from the intersection of the Westminster, MD 153°(T)/161°(M) and the Smyrna, DE 242°(T)/251°(M) radials; to Smyrna. This change does not affect the alignment of V–379.

V–541: V–541 extends from Gadsden, AL, to the intersection of the Gadsden 318° and the Vulcan, AL 029° radials. This route is only 28 nautical miles long and is not required by air traffic control. The FAA is removing the route in its entirety.

The full descriptions of the above routes are listed in the amendments to part 71 set forth below. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending five, and removing one VOR Federal airways in the eastern United States qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–67 [Amended]

From INT Centralia 010° and Vandalia, IL, 162° radials; Vandalia; Spinner, IL; Burlington, IA; Iowa City, IA; Cedar Rapids, IA; Waterloo, IA; to Rochester, MN.

* * * * *

V–159 [Amended]

From Virginia Key, FL: INT Virginia Key 344° and Treasure, FL, 178° radials; Treasure; INT Treasure 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; INT Eufaula 320° and Vulcan, AL 139° radials to Vulcan. From Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005° and St. Joseph, MO, 122° radials; St. Joseph; to Omaha, IA.

* * * * *

V–185 [Amended]

From Savannah, GA; INT Savannah 335° and Colliers, SC, 150° radials; to Colliers. From Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer.

* * * * *

V–209 [Amended]

From Semmes, AL, to INT Semmes 356° and Eaton, MS, 080° radials. From INT Bigbee, MS 139° and Brookwood, AL 230° radials; Brookwood; Vulcan, AL; INT Vulcan 097° and Gadsden, AL, 233° radials; to Gadsden.

* * * * *

V–379 [Amended]

From INT Westminster, MD 153° and Smyrna, DE 242° radials; to Smyrna.

* * * * *

V–541 [Removed]

* * * * *

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

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–27081 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130 and 131

[Docket No. FDA–2000–P–0126 (formerly Docket No. 2000P–0658)]

RIN 0910–AI40

International Dairy Foods Association and Chobani, Inc.: Response to the Objections and Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of public hearing requests; removal of administrative stay.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) received objections and requests for a hearing from the International Dairy Foods Association (IDFA) and Chobani, Inc. (Chobani) on the final rule titled ''Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt,'' which published on June 11, 2021. The final rule revoked the standards of identity for lowfat yogurt and nonfat yogurt and amended the standard of identity for yogurt in numerous respects. We are denying the requests for a public hearing and modifying the final rule in response to certain objections. Therefore, the stay of the effectiveness for the final regulation is now lifted.

DATES: This rule is effective January 17, 2023. The compliance date of this final rule is January 1, 2024.

ADDRESSES: You may submit objections and request a hearing on new provisions added by this response to objections as follows. Please note that late, untimely filed objections will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 17, 2023. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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–2000–P–0126 for ''International Dairy Foods Association and Chobani, Inc.: Response to the Objections and Denial of the Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Andrea Krause, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371, or Joan Rothenberg, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

Section 401 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 341) directs the Secretary of Health and Human Services (Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity whenever, in the judgment of the Secretary, such action will promote honesty and fair dealing in the interest of consumers. Under section 701(e)(1) of the FD&C Act (21 U.S.C. 371(e)(1)), any action for the amendment or repeal of any definition and standard of identity under section 401 of the FD&C Act for any dairy product (*e.g.,* yogurt) must begin with a

proposal made either by FDA under our own initiative or by petition of any interested persons.

In the **Federal Register** of June 11, 2021 (86 FR 31117), we issued a final rule amending the definition and standard of identity for yogurt ((§ 131.200) (21 CFR 131.200)) and revoking the definitions and standards of identity for lowfat yogurt (21 CFR 131.203) and nonfat yogurt (21 CFR 131.206). This action was in response, in part, to a citizen petition submitted by the National Yogurt Association (NYA). The final rule modernized the yogurt standard to allow for technological advances while promoting honesty and fair dealing in the interest of consumers.

The preamble to the final rule stated that the effective date of the final rule would be on July 12, 2021, except as to any provisions that may be stayed by the filing of proper objections (86 FR 31117 at 31136). Pursuant to section 701(e) of the FD&C Act, the final rule notified persons who would be adversely affected by the final rule that they could file objections, specifying with particularity the provisions of the final rule deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. We gave interested persons until July 12, 2021, to file objections and request a hearing on the final rule.

The IDFA and Chobani timely filed objections and requested a hearing with respect to several provisions in the final rule (see Objections and Request for Hearings submitted by Michael Dykes, President and Chief Executive Officer, International Dairy Foods Association, dated July 12, 2021, to the Dockets Management Staff, Food and Drug Administration (Comment ID FDA–2000–P–0126–0109) (IDFA objection) and Objection and Requests for Hearing submitted by Matthew Graziose, Director, Regulatory Affairs & Compliance, Chobani, dated July 12, 2021, to the Dockets Management Staff, Food and Drug Administration (Comment ID FDA–2000–P–0126–0108) (Chobani objection)). Section 701(e)(2) of the FD&C Act provides that, until final action is taken by the Secretary, the filing of objections operates to stay the effectiveness of those provisions to which the objections are made.

In the **Federal Register** of March 23, 2022 (87 FR 16394) we issued a notice providing clarification on which provisions of the final rule were stayed and which requirements of the previous final rule that we issued in 1981 (46 FR 9924) are in effect pending final action under section 701(e) of the FD&C Act.

II. Standards for Granting a Hearing

Specific criteria for granting a hearing are set out in § 12.24(b) (21 CFR 12.24(b)). Under that regulation, a hearing will be granted if the material submitted by the requester shows that: (1) there is a genuine and substantial factual issue for resolution at a hearing (a hearing will not be granted on issues of policy or law); (2) the factual issue can be resolved by available and specifically identified reliable evidence (a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions); (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requester (a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate); (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested (a hearing will not be granted on factual issues that are not determinative with respect to the action requested, *e.g.,* if the action would be the same even if the factual issue were resolved in the way sought); (5) the action requested is not inconsistent with any provision in the FD&C Act or any regulation particularizing statutory standards (the proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved); and (6) the requirements in other applicable regulations, *e.g.,* 21 CFR 10.20, 12.21, 12.22, 314.200, 514.200, and 601.7(a), and in the notice issuing the final regulation or the notice of opportunity for a hearing are met.

A party seeking a hearing must meet a ''threshold burden of tendering evidence suggesting the need for a hearing'' (*Costle* v. *Pacific Legal Foundation,* 445 U.S. 198, 214–215 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to ''sharpen the issues'' or to ''fully develop the facts'' does not meet this test (*Georgia Pacific Corp.* v. *EPA,* 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any or sufficient factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute, and a party is entitled to judgement as a matter of law (see *Rule 56, Federal Rules of Civil Procedure*). The same principle applies to administrative proceedings (21 CFR 12.28, see *Vermont Dep't of Pub. Serv.* v. *FERC,* 817 F.2d 127, 140 (D.C. Cir. 1987)).

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact ''concerning which a meaningful hearing might be held'' (*Pineapple Growers Ass'n* v. *FDA,* 673 F.2d 1083, 1085 (9th Cir. 1982) see also *Cmty. Nutrition Inst.* v. *Young,* 773 F.2d 1356, 1364 (D.C. Cir. 1985)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, an agency need not grant a hearing (see *Cmty. Nutrition Inst.* v. *Young,* 773 F.2d 1356, 1364 (D.C. Cir. 1985); *Dyestuffs and Chemicals, Inc.* v. *Flemming,* 271 F.2d 281, 286 (8th Cir. 1959)). A hearing is justified only if the objections are made in good faith and if they raise ''material' issues of fact'' (*Pineapple Growers Ass'n,* 673 F.2d at 1085). A hearing need not be held to resolve questions of law and policy (see *Kourouma* v. *FERC,* 723 F.3d 274, 277–78 (D.C. Cir. 2013); *Citizens for Allegan County, Inc.* v. *FPC,* 414 F.2d 1125, 1128 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC,* 256 F.2d 233, 240 (5th Cir. 1958)).

Even if the objections raise material issues of fact, we need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality, such as collateral estoppel, can be validly applied to the administrative process (see *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino,* 501 U.S. 104, 107–08 (1991); *Pacific Seafarers, Inc.* v. *Pac. Far East Line, Inc.,* 404 F.2d 804, 809 (D.C. Cir. 1968), *cert. denied,* 393 U.S. 1093 (1969)). In explaining why these principles ought to apply to an agency proceeding, the U.S. Court of Appeals for the District of Columbia Circuit wrote: ''The underlying concept is as simple as this: justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity'' (*Retail Clerks Union, Local 1401* v. *NLRB,* 463 F.2d 316, 322 (D.C. Cir. 1972); see also *Costle* v. *Pacific Legal Foundation,* 445 U.S. 198 at 215–17). In addition, under our regulations, we may determine upon review of an objection that the regulation should be modified or revoked (§ 12.26 (21 CFR 12.26)). If the modification or revocation is

consistent with the objector's request, there is no genuine and substantial issue of fact for resolution at a hearing and the hearing may be denied (§ 12.24(b)(1)).

III. Analysis of Objections and Response to Hearing Requests

Under section 701(e) of the FD&C Act and 21 CFR part 12, subpart B, of our regulations, we have considered the objections and requests for a hearing and our conclusions are as follows:

The submission from IDFA contains five numbered objections, and IDFA requests a hearing on each of them. In addition, Chobani submitted one objection and request for a hearing. We address each objection below, as well as the evidence and information filed in support of each. For purposes of clarity, we have maintained the objection numbers assigned by IDFA and Chobani.

IDFA's objections were directed at several provisions in § 131.200(a) of the final rule: (1) the requirement to achieve either a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower prior to the addition of bulky flavoring ingredients; (2) those portions of § 131.200(a), (b), and (c) that prohibit the addition of pasteurized cream after culturing; (3) the provision in § 131.200(d)(8)(ii) that would require a yogurt with added vitamin D to contain at least 25 percent Daily Value (DV) vitamin D per Reference Amount Customarily Consumed (RACC); (4) the requirement that yogurt contain not less than 3.25 percent milkfat; and (5) the exclusion of safe and suitable ''non-nutritive sweeteners'' from paragraph (d)(2) as an optional ingredient and the limitation of their use to only those instances where the product bears an expressed nutrient content claim as part of the product name, such as ''reduced calorie yogurt'' or ''reduced sugar yogurt,'' under § 130.10 (21 CFR 130.10).

In addition, Chobani objected to the provision in § 131.200(b) as it does not allow for ultrafiltered milk to be used as a basic dairy ingredient, and Chobani requested a hearing.

A. IDFA Titratable Acidity and pH Objections

In this objection, IDFA asserted that the final rule's requirement that yogurt has either a titratable acidity of not less than 0.7 percent, expressed as lactic acid, or a pH of 4.6 or lower before the addition of bulky flavoring ingredients (such as fruits and fruit preparations), is not practical and does not reflect consumer taste preferences or current industry practice for yogurt manufacturing. IDFA stated that the requirement will not promote honesty and fair dealing in the interest of consumers. IDFA asserted that the requirement should be a titratable acidity of not less than 0.6 percent, expressed as lactic acid, measured in the white mass of the yogurt, or a pH of 4.6 or lower measured in the finished product within 24 hours after filling. IDFA requested a hearing on the following issues: (1) whether a requirement that titratable acidity or pH be reached prior to the addition of bulky flavors in the manufacturing process is consistent with the basic nature and essential characteristics of yogurt; (2) whether a requirement that prohibits yogurt from being filled at a pH of 4.8 or less and reaching a pH of 4.6 or below within 24 hours after filling is consistent with the basic nature and essential characteristics of yogurt; and (3) whether a minimum titratable acidity requirement of 0.7 percent is in the interest of consumers and necessary to maintaining the basic nature and essential characteristics of yogurt.

We have addressed this objection and request for a hearing in a letter and proposed order sent to IDFA pursuant to § 12.24(d). We are issuing the proposed order to deny IDFA's request for a hearing with respect to pH pursuant to § 12.24(b)(1), and also deny the request for a hearing with respect to titratable acidity pursuant to § 12.24(b)(1). A copy of the proposed order is available in Docket No. FDA–2000–P–0126 (formerly Docket No. 2000P–0658). (See instructions for accessing the docket.)

B. IDFA Objection to the Requirement That Cream Be Added Before Culturing

IDFA objected to § 131.200(a), (b), and (c) insofar as they prohibit the addition of pasteurized cream after culturing and asked FDA to stay such provisions. The final rule under § 131.200(a) requires that pasteurized cream, if used as a basic dairy ingredient under § 131.200(b) or an optional dairy ingredient under § 131.200(c), be added before culturing with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus delbrueckii* subsp. *bulgaricus* and *Streptococcus thermophilus*. IDFA requested that we revise the final rule to allow for pasteurized cream to be added after culturing.

IDFA contended that the addition of pasteurized cream after culturing is consistent with the basic nature and essential characteristics of yogurt and requested a hearing on this issue. IDFA explained that ''milkfat is not critical to the basic nature and properties of yogurt, in large part because the yogurt cultures do not act on the milkfat during the culturing process, so the addition of a milk-derived ingredient like cream after culturing does not alter the key characteristics of the product'' (IDFA objection at page 6). Even if milkfat is not acted upon during the culturing process, it does not follow that any milk-derived ingredient will not be acted upon during the culturing process and therefore will not change the characteristics of the end product depending on whether it is added before or after culturing. IDFA's argument appears to be based on the assumption that cream is comprised entirely of milkfat. We note that IDFA did not provide any evidence in its objection that cream is comprised entirely of milkfat and that other components are not present.

In fact, cream is comprised of several components other than milkfat. These components include lactose and protein (Refs. 1 to 3). Under 21 CFR 131.3(a), cream used in the manufacture of yogurt is only required to have a minimum of 18 percent milkfat. While the milkfat content of cream above this minimum may vary, lactose and protein are still present. For example, heavy whipping cream has been reported to have fat content of 36.8 percent, lactose content of 3.2 percent, and protein content of 2.2 percent (see Ref. 1). Whole milk—which IDFA does not dispute should be included in culturing (IDFA objection page 6)—has been reported to have fat content of 3.8 percent, lactose content of 4.9 percent, and protein content of 3.2 percent. While the milkfat content of these two dairy ingredients is very different, the lactose content and protein content are similar. The lactose in cream can be fermented and impact the characteristics of the end product (Ref. 3), as is the case in the production of sour cream (see 21 CFR 131.160(a)).

IDFA acknowledges that lactose and protein are subject to action by yogurt cultures during fermentation and impact the characteristics of yogurt. IDFA states, on page 6 of its objection, that ''addition of milk and milk-derived ingredients that contain significant amounts of lactose, proteins and amino acid peptides, which are indeed subjected to action by yogurt cultures during fermentation, do play a role in providing the unique organoleptic characteristics of yogurt.'' IDFA further states, on page 7, that ''the main contribution to the unique flavor and aroma of plain, unflavored yogurt derives from the homofermentative metabolism of lactose in the milk and the lactose-containing milk-derived ingredients by the two defining thermophilic (or more accurately, ''thermotolerant'') yogurt cultures *L.*

bulgaricus and *S. thermophilus.*'' Thus, by IDFA's own admission, the characteristics of yogurt are impacted by whether components of cream are added before or after culturing.

Since 1981, cream has not been permitted to be added after culturing in the manufacture of yogurt. None of the evidence provided by IDFA specifically examines the addition of cream after culturing in the manufacture of yogurt and compares the end product to yogurt manufactured with cream added before culturing. To justify a change in the production of yogurt from how it has been produced for 40 years, IDFA would have needed to provide evidence that the addition of cream—not merely the addition of milkfat—does not impact the characteristics of yogurt from how it has been produced and sold to consumers. The publications cited by IDFA (Refs. 4 to 7) do not address impacts on the characteristics of yogurt from the use of cream, and more specifically from the use of cream after culturing. Moreover, the expert witness testimony described in appendix 8 of IDFA's objection is specifically about the addition of milkfat to yogurt and not about the addition of cream to yogurt. We conclude that the data and information submitted, if established at a hearing, would not be adequate to justify resolution of the factual issue in the way sought by IDFA. The data and information submitted are insufficient to justify the factual determination urged, even if accurate. Therefore, under § 12.24(b)(3), we deny IDFA's request for a hearing on whether the addition of pasteurized cream after culturing is consistent with the basic nature and essential characteristics of yogurt.

Additionally, IDFA did not provide evidence to support its assertion that the addition of pasteurized cream after culturing does not affect the texture of yogurt. We are denying IDFA's request for a hearing with respect to this issue as it based on mere allegations or denials and not on any available and specifically identified reliable evidence (see § 12.24(b)(2)). We note that evidence (Ref. 8) gathered by FDA indicates that adding cream before culturing increases the yogurt's viscosity and firmness, and decreases the serum separation, contributing to the characteristic texture of yogurt. When cream is added after culturing, the fat globules do not serve a structure-building function but are only present in the structure as a filling substance (Refs. 8 and 9). The force that would be necessary to blend pasteurized cream homogeneously through the yogurt if it were added after culturing, as well as the additional moisture present in pasteurized cream, could affect the texture of the yogurt. Thus, given the absence of evidence to support IDFA's contention and available evidence to the contrary, the data and information submitted are inadequate to justify the resolution of the factual issue in the way sought by IDFA (see § 12.24(b)(3)).

We further note that adequacy of either factual issue (*i.e.,* impact of addition of cream after culturing on taste, aroma, and flavor and impact of addition of cream after culturing on texture) is not sufficient to justify amending the standard of identity to permit the addition of cream after culturing. Both factual issues must be resolved in the way sought by IDFA to justify such an amendment. Accordingly, we also deny IDFA's request for a hearing under § 12.24(b)(4).

IDFA stated that allowing the addition of pasteurized cream after culturing improves production efficiency and reduces manufacturing costs. While we recognize the importance of these issues for yogurt manufacturers, impacts on production efficiency and manufacturing costs do not present genuine and substantial issues of fact as they are not material to whether a food standard promotes honesty and fair dealing in the interest of consumers—which is the basis under the law for establishing food standards (21 U.S.C. 341). Historically, we have determined the requirements of food standards issued under section 401 of the FD&C Act based on whether the requirements would prevent economic adulteration, maintain the integrity of food (*i.e.,* basic nature and essential characteristics), or ensure that products meet consumer expectations about the food.

We note that interested parties can submit a Temporary Marketing Permit (TMP) application in accordance with 21 CFR 130.17 for the addition of pasteurized cream after culturing in yogurt and lower fat yogurt. As discussed above, given FDA regulations have required since 1981 that cream be added before and not after culturing when used in the manufacture of yogurt, a TMP would allow parties to gather appropriate supporting data to support that the addition of cream after culturing is consistent with the basic nature and essential characteristics of yogurt and lower fat yogurt.

C. IDFA Objection to the Optional Addition of Vitamin D

IDFA objected to the provision in § 131.200(d)(8)(ii), which requires that, if added, vitamin D must be present in such quantity that the food contains not less than 25 percent DV per RACC within limits of current good manufacturing practices. IDFA requested that the provision be modified to lower the minimum added vitamin D level to 10 percent DV per RACC. Alternatively, IDFA requested a hearing on the amount of vitamin D in yogurt that would be consistent with consumer expectations and the basic nature and characteristics of yogurt that contains added vitamin D, and aligned with current regulatory limitations.

In support of its proposed modification, IDFA asserted that a minimum vitamin D threshold of 25 percent DV per RACC conflicts with the level authorized by our generally recognized as safe (GRAS) regulation for vitamin D, which sets the limit for vitamin D in milk products at 89 International Units (IU) per 100 grams (g) of food (21 CFR 184.1950(c)(1)), equivalent to 3.8 micrograms (mcg) per RACC. In addition, IDFA asserted that the required level of vitamin D provided for in the final rule is unreasonably high in light of the basic nature of yogurt and does not promote the interests of consumers.

We acknowledge that, under the minimum vitamin D threshold in the final rule, yogurt with added vitamin D must contain at least 5 mcg per RACC and therefore would be above the maximum threshold of 3.8 mcg per RACC permitted under our GRAS regulation. This effectively prevents manufacturers from fortifying their yogurt products with vitamin D and is not what we intended under the final rule. We note that vitamin D is identified as a nutrient of public health concern under the *Dietary Guidelines for Americans, 2020–2025.*

We agree with IDFA's proposal to modify § 131.200(d)(8)(ii) to set a minimum level of vitamin D at 10 percent DV per RACC. This level equates to a minimum of 2 mcg per RACC. Thus, there would be a range of 2 to 3.8 mcg per RACC within which manufacturers could comply with the GRAS regulation and also optionally fortify yogurt with vitamin D under the yogurt standard of identity. A minimum amount of 2 mcg per RACC is the minimum amount at which the Agency deems a food to be a ''good source'' of vitamin D (see our nutrient content claim regulation under 21 CFR 101.54(c)(1)). The minimum in § 131.200(d)(8)(ii) applies to nonfat yogurt, lowfat yogurt, and reduced fat yogurt under § 130.10. Consequently, yogurt and lower fat yogurt products containing added vitamin D under the modified final rule will continue to be a good source of vitamin D for consumers.

We note that a minimum of 10 percent DV per RACC, or 2 mcg per RACC, is similar to the minimum under the standard of identity before it was amended in 2021 by the final rule. From 1982 to 2021, vitamin D addition to yogurt was permitted at a level of 400 IU per quart (see 47 FR 41519 at 41520 and 41524, September 21, 1982). This amount equates to approximately 1.74 mcg per RACC. Thus, modifying the standard of identity to require a minimum vitamin D level of 10 percent DV per RACC, results in a similar amount of vitamin D as was previously permitted under the standard and does not alter the characteristics of yogurt with respect to fortification with this nutrient.

We find that our own analysis and the information provided by IDFA in their objection present sufficient grounds for amending the standard of identity under § 131.200(d)(8)(ii) such that yogurt is required to contain at least 10 percent DV per RACC of vitamin D, within limits of current good manufacturing practices, when vitamin D is added. This amendment is consistent with IDFA's proposed modification. Therefore, we are denying IDFA's request for a hearing regarding the amount of vitamin D in yogurt because there is not a genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1)).

D. IDFA Objection to the 3.25 Percent Minimum Milkfat Requirement

IDFA also objected to the requirement in § 131.200(a) that yogurt contain not less than 3.25 percent milkfat. IDFA asserted that the 3.25 percent minimum milkfat requirement is not consistent with the basic nature and essential characteristics of yogurt, nor does it reflect current industry practices. IDFA further asserted that the requirement creates naming anomalies and restricts innovation and the use of flavoring ingredients. IDFA requested that we modify the final rule to include a minimum total fat content of >3.0 g per RACC instead of the 3.25 percent milkfat minimum (5.5 g per RACC). IDFA requested a hearing on whether ''(1) a 3.25 percent milkfat minimum is critical to the basic nature and characteristics of yogurt; and (2) whether fat/oils from nondairy ingredients, particularly flavoring ingredients, could contribute to variances in the taste, texture, color, or aroma of yogurt and is inconsistent with the basic nature and essential characteristics of the food'' (IDFA objection at page 15).

In support of its contention that milkfat does not contribute to the basic nature and essential characteristics of yogurt and that no minimum milkfat requirement is needed, IDFA relied on the discussion in its second objection (*i.e.,* the requirement that cream be added before culturing). IDFA stated that if a hearing were granted, it would provide evidence ''demonstrating that milkfat is not critical to the basic nature and characteristics of yogurt, in large part because the yogurt cultures do not act on the milkfat during the culturing process'' (*Id.*). IDFA further stated that it would present ''testimony by experts in yogurt production and presentation of scientific publications by subject matter experts demonstrating the results of sensory and analytical chemistry research conducted that has identified the specific compounds that contribute most to the unique flavors and aromas of yogurt and how they are derived predominantly through lactose fermentation'' (*Id.*).

The discussion in IDFA's second objection is about whether milkfat is fermented and whether the end product is impacted by the addition of milkfat after culturing rather than before culturing. The second objection does not address whether a reduction of milkfat in the end product changes the characteristics of yogurt. The evidence described by IDFA similarly focuses on whether milkfat is acted upon during the culturing process and not on whether the absence of milkfat from the end product affects the basic nature and essential characteristics of yogurt. Even if it is true that components other than milkfat contribute most to the flavor and aroma of yogurt, this does not preclude the possibility that milkfat also contributes to the flavor and aroma or other essential characteristics of yogurt. In this objection, the issue is whether a reduction of milkfat from the 3.25 percent minimum in the end product affects the basic nature and essential characteristics of yogurt, not whether milkfat is acted upon during culturing or whether other components affect the essential characteristics of yogurt.

The publications cited by IDFA do not support that a reduction in milkfat in the end product does not affect the basic nature and essential characteristics of yogurt. References 5, 6, and 7 speak solely to the metabolic activity of the fermentation organisms on the components of the yogurt base (carbohydrates, proteins, lipids). The impact of the microorganisms on the fat component appears to be measurable (see Ref. 7, Table 7.11 on Page 578) but potentially minimal in comparison to other components produced by the fermentation of lactose. The publications do not address the physical presence of fat on the characteristics of the end product. Routray and Mishra (Ref. 4) review the influence of fat content on the persistence of volatile flavor compounds, the distribution of flavor compounds throughout the yogurt matrix, and the necessity of fat replacers to achieve similar texture and flavor release. Additionally, they discuss the importance of fat as a structuring material in yogurt.

Moreover, statements made by IDFA in its objection support that milkfat contributes to the basic nature and essential characteristics of yogurt. In its second objection, IDFA states, ''milkfat has an impact on the organoleptic characteristics of yogurt regardless of whether added before or after fermentation'' (*Id.* at page 7). In this objection IDFA asserts, ''yogurt made with milkfat indeed has volatile fatty acids and other compounds that contribute to flavor and aroma'' (*Id.* at page 12) and ''milkfat does not need to be present in the fermented dairy ingredients to contribute to the basic and essential characteristics of yogurt'' (*Id.* at page 13). Thus, by IDFA's own admissions, milkfat contributes to the characteristics of yogurt.

IDFA made additional arguments about consumer preferences for lower fat yogurt products and the absence of a milkfat requirement from the Codex Standard for Fermented Milks. The claim that most consumers prefer lower fat yogurt products to yogurt does not address the issues of whether consumers who purchase yogurt, rather than lower fat yogurt, expect it to contain milkfat or whether the 3.25 percent minimum milkfat requirement ensures that yogurt has the characteristics consumers expect and that distinguish it from lower fat yogurt. Even if most consumers prefer lower fat yogurt products, the 3.25 percent minimum milkfat requirement does not prohibit the marketing of these products when labeled with their respective nutrient content claims. Evidence demonstrating that total fat is of greater significance to consumers than milkfat also would not address these issues. Regarding the absence of a milkfat minimum from the Codex standard, the Codex standard is an international standard and does not reflect yogurt products sold in the United States or American consumers' expectations about yogurt.

Since the yogurt and lowfat yogurt standards of identity were established in 1981, yogurt and lowfat yogurt sold in the United States have been required to have a minimum of 3.25 percent and 0.5 to 2 percent milkfat, respectively. Reduced fat yogurt has been required to

have milkfat content between the minimum for yogurt and the maximum for lowfat yogurt since the 1990s when the general definition and standard of identity under § 130.10 was established (see 58 FR 2431 at 2446, January 6, 1993). Thus, for 40 years, consumers have been accustomed to yogurt and lowfat yogurt containing milkfat; and for nearly 30 years, consumers have been accustomed to reduced fat yogurt containing milkfat. A review by FDA of products on the market sold as ''yogurt'' found that the vast majority contain at least 3.25 percent milkfat (Ref. 10). IDFA has not presented information that these products would retain the characteristics consumers expect and that distinguish the foods if they were changed to contain no milkfat or less milkfat than the amount required.

Because the data and information submitted by IDFA are insufficient to justify that a reduction of milkfat from the 3.25 percent minimum does not affect the basic nature and essential characteristics of yogurt, we deny IDFA's request for a hearing on whether the 3.25 percent milkfat minimum is critical to the basic nature and essential characteristics of yogurt under § 12.24(b)(3).

IDFA also requested a hearing on whether fat or oils from nondairy ingredients, particularly flavoring ingredients, could contribute to variances in the taste, texture, color, or aroma of yogurt and is inconsistent with the basic nature and essential characteristics of the food. In the preamble to the final rule, we explained that nondairy fats or oils can contribute to variances in the taste, texture, color, or aroma of yogurt if they replace the milkfat in yogurt (86 FR 31117 at 31121). IDFA responded in its objection that non-dairy fats and oils are not part of the allowed optional ingredients and that, if a fat source is not part of a flavoring ingredient (*e.g.,* coconut flakes, cacao), it may not be added. We agree with this interpretation and therefore interpret IDFA's request for a hearing to pertain to whether the addition of non-milkfat from flavoring ingredients is inconsistent with the basic nature and essential characteristics of yogurt and lower fat yogurt.

To the extent that the request pertains to the addition of non-milkfat from flavoring ingredients in addition to the milkfat required for yogurt under § 131.200 and lower fat yogurt under § 130.10, we agree that addition of non-milkfat from flavoring ingredients should be permitted and is consistent with the basic nature and essential characteristics. The final rule permits the addition of flavoring ingredients, including fat-containing flavoring ingredients under § 131.200(d)(3). However, as explained in IDFA's objection, the final rule does not permit the addition of fat-containing flavoring ingredients to lower fat yogurt under § 130.10 since the nutrient content claims for ''nonfat,'' ''lowfat,'' and ''reduced fat'' limit the amount of fat that products may contain and the limit has already been met by milkfat. IDFA explained that lowerfat yogurt products are consequently precluded from containing flavoring ingredients such as coconut and cacao.

We agree that this limitation may restrict innovation and prevent the manufacture and sale of lowerfat yogurt products that consumers expect. Accordingly, we are modifying § 130.10 to add new paragraph (e) to permit fat-containing flavoring ingredients in nonfat yogurt, lowfat yogurt, and reduced fat yogurt. These products are still required under § 130.10 (a) to contain milkfat in the amount corresponding to the nutrient content claims in their names; however, the modified rule permits fat from flavoring sources to be added above the fat content of the nutrient content claim. Such products must be labeled with the nutrient content claim corresponding to their milkfat content and a descriptor of the flavoring ingredient (*e.g.,* ''lowfat yogurt with cashews''). The descriptor should describe in plain language the identity of the flavoring ingredient (*e.g.,* cashews, chocolate chips, coconut).

We are also modifying the final rule to permit yogurt with milkfat content between the upper limit for reduced fat yogurt (2.44 percent) and the minimum requirement for yogurt (3.25 percent). New paragraph (g) under § 131.200 specifies that yogurt may contain less than 3.25 percent milkfat but at least 2.44 percent milkfat and that such products must be labeled with a statement of the milkfat percentage rounded to the nearest half percent (*e.g.,* ''2.5 percent milkfat''). Under § 131.200(d)(3), such products are permitted to contain flavoring ingredients that increase the total fat content. These modifications to § 131.200 address the gap in milkfat allowance identified by IDFA in its objection (IDFA objection at pages 13–14) and allow the manufacture and sale of yogurt products with milkfat not previously covered by the final rule or the 1981 final rule.

As a consequence of our modifications to § 130.10 and § 131.200, manufacturers may produce yogurt products with any amount of milkfat within the specified limits and with additional fat content from flavoring ingredients. This introduces flexibility into the standards of identity and provides new opportunities for innovation as requested by IDFA. An amendment to replace the 3.25 percent minimum milkfat requirement with >3.0 grams of fat per RACC requirement is not needed to accomplish these purposes. The modified final rule also allows manufacturers to produce yogurt products with less saturated fat, consistent with recommendations in the *Dietary Guidelines for Americans 2020–2025,* since the total fat content can exceed the limit for the nutrient content claim and milkfat need not be increased to 3.25 percent. Yogurt products will continue to be named according to the milkfat limits in the final rule (*i.e.,* ''yogurt,'' ''reduced fat yogurt,'' ''lowfat yogurt,'' and ''nonfat yogurt''). These names have been in place for decades and have distinguished yogurt products from each other and are recognized by consumers. While the ingredient statement may indicate that dairy ingredients are present, it does not explicitly inform consumers that milkfat is present or in what quantity. Because we agree with IDFA that non-milkfat from flavoring ingredients should be permitted in yogurt and lower fat yogurt above the minimum milkfat requirements and have modified the final rule accordingly, IDFA's request for a hearing is denied under § 12.24(b)(1) as there is no genuine and substantial issue of fact for resolution at a hearing.

To the extent that IDFA's request for a hearing pertains to the addition of non-milkfat from flavoring ingredients as a replacement for milkfat in yogurt and lower fat yogurt, we deny IDFA's request for a hearing under § 12.24(b)(3) because the data and information submitted are insufficient to justify that use of fat and oils from nondairy flavoring ingredients to replace milkfat in yogurt is consistent with the basic nature and essential characteristics of yogurt. First, as explained above, IDFA has not submitted information sufficient to justify that a reduction in milkfat does not affect the basic nature and essential characteristics of yogurt. IDFA also has not presented evidence that consumers who purchase lower fat yogurt products (other than nonfat yogurt) do not expect them to contain milkfat or that their lower milkfat levels do not contribute to their characteristics. Second, IDFA stated in its objection that it would present examples and sales volumes demonstrating that fat from nondairy ingredients is consistent with the basic

nature and essential characteristics of many flavored yogurts on the market today and accepted by consumers. It is unclear what examples IDFA would present and whether such examples would be representative of the market. It is also unclear what is meant by ''sales volumes'' and how sales of certain products would demonstrate consumer acceptance. Nevertheless, yogurt, lowfat yogurt, and nonfat yogurt prior to and after publication of the final rule have been required to contain certain milkfat content. Thus, examples and sales of products on the market would not pertain to products that contain fat or oils from non-dairy flavoring ingredients as a replacement for milkfat and would not be sufficient to justify the factual determination urged by IDFA.

E. IDFA Objection to the Exclusion of Safe and Suitable Non-Nutritive Sweeteners

IDFA objected to the exclusion of safe and suitable ''non-nutritive sweeteners'' from § 131.200(d)(2) as an optional ingredient and to the limitation of the use of non-nutritive sweeteners to products bearing a nutrient content claim as part of the name or statement of identity. IDFA asserted that ''[t]he use of non-nutritive sweeteners is consistent with the basic nature of a sweetened yogurt'' (IDFA objection at page 16) and requested a hearing on ''whether the use of safe and suitable non-nutritive sweeteners is consistent with the basic nature or essential characteristics of sweetened 'yogurt' '' (*Id.* at page 20). IDFA requested that we modify § 131.200(d)(2) to replace ''nutritive carbohydrate sweeteners'' with ''sweeteners,'' thereby permitting both nutritive and non-nutritive sweeteners in the manufacture of yogurt (*Id.*).

In support of its contention that the use of non-nutritive sweeteners is consistent with the basic nature and essential characteristics of yogurt, IDFA referenced our conclusion in the 2009 proposed rule that yogurt could be sweetened with non-nutritive sweeteners ''without adversely affecting the basic nature and essential characteristics of yogurt'' (*Id.*). IDFA also pointed to our enforcement discretion policy since 2009 (74 FR 2443 at 2455) regarding the use of non-nutritive sweeteners in yogurt labeled without a nutrient content claim, such as ''reduced calorie,'' as part of the name of the food. IDFA explained that yogurt products containing non-nutritive sweeteners without a nutrient content claim as part of the name of the food have been sold during this period of enforcement discretion and are commonly found on the market today.

Our rationale in the final rule for permitting the use of non-nutritive sweeteners only when making a nutrient content claim was to be consistent with the intention of the regulatory framework of § 130.10 after the Nutritional Labeling and Education Act (NLEA). We explained in the final rule that non-nutritive sweeteners should only be permitted when making a nutrient content claim and therefore when the product is subject to the general definition and standard of identity in § 130.10 (86 FR 31117 at 31128). We believed that this approach would address the comments we received to the proposed rule (74 FR 2443) concerning the presence and disclosure of artificial sweeteners while also providing manufacturers flexibility to make modified yogurt products with non-nutritive sweeteners.

Upon consideration of IDFA's objection, we agree that non-nutritive sweeteners should be permitted in yogurt without being labeled with a nutrient content claim. We acknowledge that, since the publication of the proposed rule, we have exercised enforcement discretion for yogurt products containing non-nutritive sweeteners as an optional ingredient and that do not bear a nutrient content claim as part of the statement of identity. During this 12-year period, we did not encounter any consumer issues or receive information that the use of non-nutritive sweeteners was inconsistent with what consumers expect or that such use adversely impacted the characteristics of the food. Disclosure of non-nutritive sweeteners in the ingredient statement appears to have been adequate to notify consumers of their presence. We note that non-nutritive sweeteners are declared by their common or usual names and therefore their presence is explicitly stated. We further note that nutrient content claims such as ''reduced calorie'' or ''reduced sugar'' do not necessarily inform consumers that non-nutritive sweeteners are present and may indicate that other modifications to the food have been made (*e.g.,* a ''reduced calorie'' nutrient content claim could also be met by reducing fat or lactose). In light of this information, we conclude that the use of non-nutritive sweeteners in yogurt products that do not bear a nutrient content claim is consistent with the basic nature and essential characteristics of yogurt and promotes honesty and fair dealing in the interest of consumers.

Upon further consideration, we find the limitation on non-nutritive sweeteners to only those products labeled with nutrient content claims to be inconsistent with our public health goals and policies. The *Dietary Guidelines for Americans 2020–2025* encourage consumers to limit their intake of added sugar. The sugar content of food, including yogurt, is often reduced by replacing sugar with non-nutritive sweeteners. Thus, the use of non-nutritive sweeteners in yogurt may help reduce added sugar intake. Although non-nutritive sweeteners are currently permitted in products with a nutrient content claim, such as ''reduced calorie'' or ''reduced sugar,'' the products must achieve a level of sugar reduction, *e.g.,* 25 percent less calories or sugar, to qualify for the nutrient content claim (see § 101.60). Thus, if sugar reduction falls below this threshold (*e.g.,* 25 percent less calories or sugar), then the products are not permitted to contain non-nutritive sweeteners. We seek to encourage sugar reduction even at lower levels as cumulatively these changes can make a difference in public health. Permitting non-nutritive sweeteners in yogurt is also consistent with our public health goals and policies, which seek to improve nutrition and encourage the development of more healthful foods.

For the reasons explained above, we are modifying § 131.200(d)(2) to permit ''sweeteners'' as optional ingredients in yogurt, consistent with IDFA's request. Accordingly, IDFA's request for a hearing is denied under § 12.24(b)(1) as there is no genuine and substantial issue of fact for resolution at a hearing.

F. Chobani Objections Regarding Ultrafiltered Milk

Chobani requested we permit the use of ultrafiltered (UF) milk as a basic dairy ingredient in yogurt. They objected to § 131.200(b) because it does not include UF milk as a basic dairy ingredient and therefore § 131.200(a) does not permit UF milk as a basic dairy ingredient in yogurt. Chobani provided several reasons for objecting to the exclusion of UF milk from § 131.200(b). We interpret these reasons as follows: (1) the use of UF milk as a basic dairy ingredient is consistent with the basic nature and essential characteristics of yogurt; (2) the use of UF milk as a basic dairy ingredient is safe; (3) the use of UF milk as a basic dairy ingredient will result in products with health benefits and that are as nutritious or more nutritious than yogurt produced without UF milk; (4) use of UF milk as a basic dairy ingredient will improve the efficiency of yogurt-making; (5) permitting use of UF milk would be consistent with other dairy standards of identity; and (6)

permitting the use of UF milk would be consistent with international standards for yogurt. Despite these various reasons, Chobani requested a hearing on only two issues: (1) the minimum lactose content as a substrate for bacterial cultures to develop the characteristics of ''yogurt;'' and (2) nutritional comparisons of products made from UF milk to that of traditional ''yogurt'' and other dairy foods.

Related to its first request for a hearing, Chobani stated, ''ultrafiltered milks can be used as the basic ingredient in yogurt making, with additional dairy ingredients added to reach a level of lactose that can be fermented to reach the titratable acidity/ pH requirements for yogurt and result in the minimum level of characterizing bacterial cultures (*Lactobacillus delbrueckii* ssp. *Bulgaricus* and *Streptococcus thermophilus*) as specified by the standard'' (Chobani objection at page 2). Chobani did not cite any evidence to support this contention. Furthermore, while the acidity of yogurt and characterizing bacterial culture content are important characteristics of yogurt, they are not the only essential characteristics of yogurt that should be maintained by the use of UF milk. The organoleptic characteristics and texture of yogurt should also be maintained. Chobani's objection referred to sensory quality, but did not provide any evidence to support that the sensory quality of yogurt is unaffected by the lactose content of UF milk or by the use of UF milk more generally. In sum, Chobani did not provide any evidence of the minimum lactose content, whether from UF milk or UF milk and other basic dairy ingredients combined, that would be necessary to maintain the characteristics of yogurt. We deny Chobani's first request for a hearing under § 12.24(b)(2) because the material submitted by Chobani does not show that this factual issue can be resolved by available and specifically identified reliable evidence.

Chobani did not present any information on the lactose content of UF milk that would be used as a basic dairy ingredient in yogurt making. As we noted in the final rule, fluid UF milk and its dried products are distinctly different from milk and dried milk, respectively (86 FR 31117 at 31125). The process of ultrafiltration selectively removes not only water, but also lactose, minerals, and water-soluble vitamins, resulting in a compositionally different ingredient (86 FR 31117 at 31125). Depending on the pore size of the membrane(s) used, ultrafiltration can be used to process milk to concentrate casein and whey proteins and to partially remove lactose and water-soluble minerals and vitamins. Milk may be UF until a desired protein concentration is reached and, depending on the processing conditions (*e.g.,* use of diafiltration), can result in removal of the majority of lactose and water-soluble minerals and vitamins. The amount of lactose is commonly and significantly reduced in UF milk (Ref. 11). We understand from this information that the final composition of UF milk, including the lactose content, can vary significantly and we cannot infer a certain composition and lactose content in UF milk in yogurt making. Thus, even if Chobani presented evidence of the minimum lactose content necessary to maintain the characteristics of yogurt, Chobani has not provided evidence that UF milk used in yogurt making would contain this level and therefore maintain the characteristics of yogurt. We deny Chobani's first request for a hearing under § 12.24(b)(4) because resolution of the factual issue in the way sought by Chobani is not adequate to justify amending the final rule to permit UF milk as a basic dairy ingredient.

UF milk has many constituents, only one of which is lactose. The other constituents—protein, minerals, vitamins, and water—vary in UF milk and are different than the levels in milk. Differences in these constituents may affect the basic nature and essential characteristics of yogurt when UF milk is used as a basic dairy ingredient in the manufacture of yogurt. Chobani has not provided any evidence that these differences will not change the basic nature and essential characteristics of yogurt. As such, we further deny Chobani's first request for a hearing under § 12.24(b)(4). Even if Chobani provided evidence sufficient to justify that the lactose content of UF milk that would be used in yogurt-making maintains the characteristics of yogurt, Chobani has not shown that the content of other components in UF milk used in yogurt making do not impact the basic nature and essential characteristics of yogurt.

To the extent the studies cited in references 1 and 2 of Chobani's objection (Refs. 12 and 13) are intended to support its first request for a hearing, we deny the request for a hearing under § 12.24(b)(3). Neither publication quantifies the amount of lactose necessary to produce products with the characteristics of yogurt. The publication by Uduwerella showed that it was possible to use UF milk to produce products with a pH less than 4.6 (without the addition of lactose), but stated that the physical characteristics (texture) of the yogurt were different than yogurt produced without UF milk. In the publication by Valencia, the use of UF milk resulted in a product with a higher pH than the maximum pH in the standard of identity (*i.e.,* pH of 4.6). We note also that the publications were limited in the characteristics of yogurt examined. The publication by Uduwerella did not examine the impact of UF milk on taste, and the publication by Valencia did not examine the impact of UF milk on taste or texture. Both publications were about the manufacture of Greek-style yogurt rather than the manufacture of yogurt in general. We conclude that these referenced articles are not adequate to determine the minimum lactose content to manufacture products with the characteristics of yogurt. They also are not adequate to determine whether UF milk used in yogurt making would have sufficient lactose or would otherwise be sufficient for use as a basic dairy ingredient such that products would have the characteristics of yogurt.

Chobani also requested a hearing on ''nutritional comparisons of products made from UF milk to that of traditional 'yogurt' and other foods in the Dairy group'' (*Id.*). We interpret ''traditional 'yogurt' '' to mean yogurt that is produced without UF milk as a basic dairy ingredient. Chobani explained in its objection that ''Products made from ultra-filtered milks can deliver the same type and amounts of essential vitamins and minerals that consumers have come to expect from yogurts—including a good source of calcium, a good source of phosphorous, excellent source of vitamin B12 and an excellent source of protein'' (*Id.*). Chobani further explained that ''Yogurts made from ultrafiltered milk can deliver levels of magnesium and potassium which are consistent with other foods which count towards Americans overall consumption of dairy for the purposes of dietary monitoring and guidelines development'' (*Id.*). Chobani did not provide any evidence of the nutrient content of UF milk and therefore has not shown that the nutritional comparisons can be made by available and specifically identified reliable evidence (§ 12.24(b)(2)).

Even if we assume the truth of Chobani's statements (*i.e.,* that yogurt made with UF milk as a basic dairy ingredient has the same or better level of nutrients than yogurt made without UF milk as a basic dairy ingredient or has similar levels of nutrients as other dairy foods), such finding would not be a sufficient basis for modifying the final rule to permit UF milk as a basic dairy ingredient in yogurt. Chobani must

demonstrate that the use of UF milk as a basic dairy ingredient is consistent with the basic nature and essential characteristics of yogurt. If we assume that some or all of these nutrients contribute to the basic nature and essential characteristics of yogurt, the other essential characteristics of yogurt (*e.g.,* taste and texture) must nevertheless be addressed. Hence, we also deny Chobani's second request for a hearing under § 12.24(b)(4) because resolution of the factual issue in the way sought by Chobani would not be adequate to justify amending § 131.200(b) to include UF milk as a basic dairy ingredient.

Chobani made additional arguments with respect to safety, efficiency, and consistency with other foods standards, but did not request a hearing on them. Nevertheless, we address these arguments here. With respect to safety, Chobani asserted that approaches to using UF milk in the manufacture of yogurt ''result in no deleterious effects to safety'' (*Id.*).

We agree that UF milk is safe for use in the manufacture of yogurt and note that the final rule permits UF milk in the manufacture of yogurt as an optional dairy ingredient to increase the milk solids, not fat content (§ 131.200(a) and (c)). There is no genuine and substantial issue of fact with respect to the safety of UF milk in yogurt.

Chobani also asserted that using UF milk can result in greater production efficiency. While we recognize that operational efficiency is beneficial to a manufacturer, is not material to whether a food standard promotes honesty and fair dealing in the interest of consumers under section 401 of the FD&C Act and therefore does not present a genuine and substantial issue of fact.

Chobani also stated that permitting UF milk in yogurt would create consistency with U.S. and international standards for dairy foods. Regarding U.S. standards, Chobani stated that use of UF milk is already permitted in cheesemaking. Although we issued a proposed rule in 2005 to permit the use of UF milk in standardized cheeses and related cheese products (70 FR 60751), we have not finalized the rule. However, cheese and yogurt are different foods. Assuming that the use of UF milk as an ingredient in cheese or certain cheeses is consistent with the basic nature and essential characteristics of cheese or certain cheeses, it does not follow that the use of UF milk as a basic dairy ingredient in yogurt is consistent with the basic nature and essential characteristics of yogurt.

Finally, Chobani asserted that permitting the use of UF milk in the yogurt standard of identity would be consistent with international standards for yogurt. It is unclear to which international standards Chobani is referring. International standards do not reflect yogurt products sold in the United States or reflect American consumers' expectations about yogurt and therefore their existence is not a sufficient basis for amending our standards. Chobani has not provided evidence that harmonization with international standards promotes honesty and fair dealing in the interest of American consumers.

Since the filing of their objection on July 22, 2022, Chobani submitted an application for a Temporary Marketing Permit (TMP) in accordance with § 130.17 to market test lower fat yogurt deviating from the general definition and standard of identity (§ 130.10) and yogurt deviating from the yogurt standard of identity (§ 131.200) by using UF milk as a basic dairy ingredient under § 131.200(b). This will allow Chobani to gather appropriate supporting data to present to us in the future. As of November 2022, we are continuing to consider Chobani's TMP application.

IV. Summary and Conclusions

After evaluating the objections from IDFA, we are denying the requests for a hearing discussed in sections III.B–E. With respect to the request for a hearing on the provision in § 131.200(a) of the final rule requiring either a minimum titratable acidity or a maximum pH, we have issued a proposed order to IDFA under § 12.24(d) proposing to deny the request for a hearing under § 12.24(b)(1). We are denying the requests for a hearing with respect to vitamin D addition and the use of non-nutritive sweeteners because we agree with IDFA's proposed modifications and so there are no genuine and substantial issues of fact for resolution at a hearing (§ 12.24(b)(1)). We have modified § 131.200(d)(8) to permit vitamin D addition such that yogurt contains at least 10 percent DV per RACC of vitamin D, within limits of current good manufacturing practices. We have also modified § 131.200(d)(2) to permit both nutritive sweeteners and non-nutritive sweeteners, under the term ''sweeteners,'' as optional ingredients in yogurt.

We are denying IDFA's request for a hearing with respect to the addition of cream after culturing under § 12.24(b)(2), (3), and (4) due to insufficiency of the evidence submitted by IDFA. We also deny IDFA's requests for a hearing with respect to the 3.25 percent minimum milkfat requirement and the use of fat-containing flavoring ingredients to replace milkfat in yogurt and lower fat yogurt under § 12.24(b)(3) because the data and information submitted by IDFA are insufficient to justify that milkfat does not contribute to the basic nature and essential characteristics of yogurt and lower fat yogurt. However, we have modified the final rule to permit fat-containing flavoring ingredients in lower fat yogurt above the required minimum milkfat content and to permit the manufacture of yogurt with milkfat content less than 3.25 percent but at least 2.44 percent. These modifications are made to § 130.10(e) and § 131.200(g), respectively. Thus, insofar as IDFA's objection regarding the use of fat-containing flavoring ingredients pertains to increasing the fat content above the required minimum milkfat content of lower fat yogurt, we deny IDFA's objection under § 12.24(b)(1) as there is no genuine and substantial issue of fact for resolution at a hearing.

We are also denying Chobani's requests for a hearing with respect to the use of UF milk as a basic dairy ingredient in yogurt. The requests are denied under § 12.24(b)(2), (3), and (4) as explained above.

We have completed our evaluation of the objections in sections III.B–F and provided our bases under § 12.24(b) for denying the requests for a hearing stated therein. We conclude that this document constitutes final action on these objections under § 12.28(d). Therefore, notice is given that these objections and requests for a hearing do not form a basis for further stay of the effectiveness of the final rule announced in the **Federal Register** of March 23, 2022 (87 FR 16394). Accordingly, we are ending the stay of the final rule, except with respect to the provision of § 131.200(a) requiring a minimum titratable acidity or maximum pH, and amending certain portions of § 130.10 and § 131.200 as described. This final rule is effective as of [DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Objections to and requests for hearing on the amendments may be submitted under §§ 12.20 through 12.22 in accordance with § 12.26.

V. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public

display at *https://www.regulations.gov* because they have copyright restriction, or they are available as published articles and books. Please contact either person identified in the **FOR FURTHER INFORMATION CONTACT** section to schedule a date to inspect references without asterisks. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register***,* but websites are subject to change over time.

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10. * FDA Memorandum, Juan, WenYen (2022). ''Documentation for the Analysis of Milkfat Content per Reference Amount Customarily Consumed (RACC) in Products Sold as 'Yogurt'.''
11. * U.S. Dairy Export Council, ''Ultrafiltered Milk Spec Sheet.'' (2005) Available at: *https://www.thinkusadairy.org/resources-and-insights/resources-and-insights/product-resources/ultrafiltered-milk-spec-sheet.*
12. Uduwerella, G., J. Chandrapala, and Vasiljevic, T. (2018). ''Preconcentration of Yoghurt Base by Ultrafiltration for Reduction in Acid Whey Generation During Greek Yoghurt Manufacturing.'' *International Journal of Dairy Technology,* 71: 71–80.
13. Valencia A.P., A. Doyen, S. Benoit, et al. (2018). ''Effect of Ultrafiltration of Milk Prior to Fermentation on Mass Balance and Process Efficiency in Greek-Style Yogurt Manufacture.'' *Foods,* 7(9):144.

List of Subjects

21 CFR Part 130

Food additives, Food grades and standards.

21 CFR Part 131

Cream, Food grades and standards, Milk, Yogurt.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 130 and 131 are amended as follows:

PART 130—FOOD STANDARDS: GENERAL

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

■ 2. In § 130.10, redesignate paragraphs (e) and (f) as paragraphs (f) and (g) and add new paragraph (e) to read as follows:

§ 130.10 Requirements for foods named by use of a nutrient content claim and a standardized term.

* * * * *

(e) *Yogurt with modified milkfat and fat-containing flavoring ingredients.* Fat-containing flavoring ingredients may be added to yogurt for which the milkfat content has been modified in accordance with the expressed nutrient content claim regulations in § 101.62(b) of this chapter. The name of the food includes the term ''____ yogurt,'' the blank being filled in with the nutrient content claim in § 101.62(b)(1)(i), (b)(2)(i), or (b)(4)(i) of this chapter corresponding to the milkfat content, and a descriptor of the fat-containing flavoring ingredient(s).

* * * * *

PART 131—MILK AND CREAM

■ 3. The authority citation for part 131 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 4. In § 131.200:

■ a. Lift the stay for paragraphs (a), (b), (c), (d)(2), and (d)(8)(ii);

■ b. Revise paragraphs (d)(2) and (d)(8)(ii);

■ c. Redesignate paragraphs (g) and (h) as paragraphs (h) and (i);

■ d. Add new paragraph (g).

■ e. In newly redesignated paragraph (i) introductory text, remove ''in this paragraph (h)'' and add in its place ''in this paragraph (i)'' and

The revisions and addition read as follows:

§ 131.200 Yogurt.

* * * * *

(d) * * *

(2) Sweeteners.

* * * * *

(8) * * *

(ii) If added, vitamin D must be present in such quantity that the food contains not less than 10 percent Daily Value per Reference Amount Commonly Consumed (RACC) thereof, within limits of current good manufacturing practices.

* * * * *

(g) *Yogurt containing less than 3.25 percent milkfat.* (1) Yogurt may contain less than 3.25 percent milkfat and at least 2.44 percent milkfat. If the milkfat content is below 2.44 percent, the product is considered a modified food and is covered under § 130.10 of this chapter.

(2) Yogurt with milkfat content less than 3.25 percent and at least 2.44 percent milkfat, must be labeled with the following two phrases in the statement of identity, which must appear together:

(i) The word ''yogurt'' in type of the same size and style.

(ii) The statement ''____ percent milkfat,'' the blank being filled in with the nearest half percent to the actual milkfat content of the product. This statement of milkfat content must appear in letters not less than one-half of the height of the letters in the phrase specified in paragraph (g)(2)(i) of this section, but in no case less than one-eighth of an inch in height.

(3) Yogurt with milkfat less than 3.25 percent and at least 2.44 percent milkfat must comply with this standard, except that it may deviate as described in § 130.10 (b), (c), and (d) of this chapter.

* * * * *

Dated: December 2, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–27040 Filed 12–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9970]

RIN 1545–BQ11

Information Reporting of Health Insurance Coverage and Other Issues Under Sections 5000A, 6055, and 6056

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document includes final regulations under the Internal Revenue Code that provide an automatic extension of time for providers of minimum essential coverage (including health insurance issuers, self-insured employers, and government agencies) to furnish individual statements regarding such coverage and an alternative method for furnishing individual statements when the individual shared responsibility payment amount is zero. The final regulations also provide an automatic extension of time for ''applicable large employers'' (generally employers with 50 or more full-time employees, including full-time equivalent employees) to furnish statements relating to health insurance that the applicable large employers offer to their full-time employees. Additionally, the final regulations provide that ''minimum essential coverage,'' as that term is used in health insurance-related tax laws, does not include Medicaid coverage limited to COVID–19 testing and diagnostic services provided under the Families First Coronavirus Response Act. The final regulations affect some taxpayers who claim the premium tax credit; health insurance issuers, self-insured employers, government agencies, and other persons that provide minimum essential coverage to individuals; and applicable large employers.

DATES:

Effective date: These regulations are effective on December 15, 2022.

Applicability date: The regulations under § 1.5000A–2 apply for months beginning after September 28, 2020. The regulations under §§ 1.6055–1 and 301.6056–1 apply for calendar years beginning after December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Gerald Semasek at (202) 317–7006 or Lisa Mojiri-Azad at (202) 317–4649 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 5000A and 6055 of the Internal Revenue Code (Code) and to the Procedure and Administration Regulations (26 CFR part 301) under section 6056 of the Code.

On December 6, 2021, a notice of proposed rulemaking (REG–109128–21) was published in the **Federal Register** (86 FR 68939) (2021 proposed regulations). The 2021 proposed regulations proposed amendments to the regulations under:

- Section 5000A that would provide that Medicaid coverage limited to COVID–19 testing and diagnostic services under section 6004(a)(3) of the Families First Coronavirus Response Act, Public Law 116–127, 134 Stat. 178 (Mar. 18, 2020) is not minimum essential coverage.
- Section 6055 that would provide an automatic extension of time for furnishing statements to responsible individuals [1] and permit an alternative manner for timely furnishing statements.
- Section 6056 that would provide an automatic extension of time for furnishing statements to full-time employees.

The preamble to the 2021 proposed regulations also included a renewed request for comments on rules (REG–103058–16) that were proposed in the **Federal Register** (81 FR 50671) on August 2, 2016 (2016 proposed regulations) relating to information reporting of minimum essential coverage under section 6055.

Ten comments were received in response to the 2021 proposed regulations. No public hearing was requested or held. After consideration of the comments received, this Treasury decision adopts the 2021 proposed regulations with clarifying modifications as final regulations, as discussed in the Summary of Comments and Explanation of Revisions section of this preamble. The Department of the Treasury (Treasury Department) and the IRS continue to consider the 2016 proposed regulations in light of the public comments received both in 2016 and in response to the request in the 2021 proposed regulations. The Treasury Department and the IRS expect to finalize the 2016 proposed regulations separately.

[1] As provided in § 1.6055–1(b)(11), a responsible individual includes a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

Summary of Comments and Explanation of Revisions

I. Minimum Essential Coverage Under Section 5000A

Under the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (2010) (collectively the Affordable Care Act or ACA), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the ACA may claim a premium tax credit pursuant to section 36B. Section 36B and § 1.36B–3 of the Income Tax Regulations provide that a taxpayer is allowed a premium tax credit only for months that are coverage months for individuals in the taxpayer's family, as defined in § 1.36B–1(d). Under section 36B(c)(2)(B) and § 1.36B–3(c)(1)(iii), a ''coverage month'' for an individual includes only those months for which the individual is not eligible for minimum essential coverage other than coverage in the individual market.

Section 5000A(f)(1) defines ''minimum essential coverage'' to include various types of health plans and programs, including specified government-sponsored programs such as the Medicaid program under Title XIX of the Social Security Act. Section 1.5000A–2(b)(2) lists certain government-sponsored programs that do not constitute minimum essential coverage.

Notice 2020–66, 2020–40 I.R.B. 785, provides that Medicaid coverage that is limited to COVID–19 testing and diagnostic services under section 6004(a)(3) of the Families First Coronavirus Response Act is not minimum essential coverage under a government-sponsored program. Consequently, an individual's eligibility for such coverage for one or more months does not prevent those months from qualifying as coverage months for purposes of determining eligibility for the premium tax credit under section 36B.

Consistent with the guidance provided in Notice 2020–66, the 2021 proposed regulations would amend § 1.5000A–2 by adding Medicaid coverage for COVID–19 testing and diagnostic services to the enumerated health coverages under § 1.5000A–2(b)(2) that do not qualify as minimum essential coverage under a government-sponsored program. This amendment to § 1.5000A–2 would apply for months beginning after September 28, 2020. Under the 2021 proposed regulations,

for months beginning on or after January 1, 2020, and before September 28, 2020, taxpayers could rely upon Notice 2020–66. No comments were received on this proposed change. Accordingly, the Treasury Department and the IRS are finalizing the proposed amendment to § 1.5000A–2 without change.

II. Information Reporting Under Sections 6055 and 6056 and Penalties Under Sections 6721 and 6722

Section 6055 requires all persons who provide minimum essential coverage to an individual to report certain information to the IRS that identifies covered individuals and the period of coverage. *See* section 6055(a) and (b). Those persons are also required to furnish a statement to the covered individuals with the same information. *See* section 6055(c). These information returns and written statements were needed to administer the individual shared responsibility provisions under section 5000A until the individual shared responsibility payment amount was reduced to zero for months beginning after December 31, 2018 by Public Law 115–97, 131 Stat. 2054, 2092 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). As a result, covered individuals no longer needed the information on the written statements (Form 1095–B) to prepare and file their individual returns. However, the TCJA did not amend any of the reporting or furnishing requirements under section 6055.

Under section 6055 and § 1.6055–1(f) and (g), every person that provides minimum essential coverage to an individual during the calendar year is required to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to the responsible individual identified on the return a written statement on or before January 31 of the year following the calendar year to which the statement relates. The IRS generally has designated Form 1094–B, *Transmittal of Health Coverage Information Returns,* and Form 1095–B, *Health Coverage,* to meet the section 6055 requirements.

Section 6056 requires an applicable large employer (ALE), as defined in section 4980H(c)(2) of the Code, that is subject to the requirements of section 4980H to file information returns annually and furnish written statements with respect to the health insurance, if any, that the employer offers to its full-time employees. The information returns are used by the IRS to administer the employer shared responsibility provisions of section 4980H, and by certain full-time employees to help determine if they are eligible for the premium tax credit under section 36B.

Under section 6056 and § 301.6056–1(e) and (g), every ALE and member of an aggregated group that is determined to be an ALE (collectively, ALE member) is required to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to full-time employees a written statement on or before January 31 of the year following the calendar year to which the statement relates. The IRS generally has designated Form 1094–C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns,* and Form 1095–C, *Employer-Provided Health Insurance Offer and Coverage,* to meet the section 6056 requirements.

In addition, an ALE member that offers coverage through a self-insured health plan must complete the reporting required under section 6055, specifically, the information regarding each individual enrolled in the self-insured health plan, using Form 1095–C, Part III, rather than Form 1095–B.

The current regulations under sections 6055 and 6056 allow the IRS to grant an extension of time of up to 30 days to furnish statements to individuals for good cause shown. *See* §§ 1.6055–1(g)(4)(i)(B)(*1*) and 301.6056–1(g)(1)(ii)(A). Additionally, under the current regulations the Commissioner may prescribe guidance or procedures for automatic extensions of time for furnishing statements to individuals. *See* §§ 1.6055–1(g)(4)(i)(B)(*2*) and 301.6056–1(g)(1)(ii)(B). Through a series of notices, the Treasury Department and the IRS extended the due date for furnishing statements to individuals under sections 6055 and 6056 for calendar years 2015 through 2020.[2]

Section 6721 imposes a penalty for failing to timely file an information return or for filing an incorrect or incomplete information return. Section 6722 imposes a penalty for failing to timely furnish an information statement or furnishing an incorrect or incomplete information statement. The section 6721 and 6722 penalties are imposed regarding information returns and statements listed in section 6724(d), which include those required by sections 6055 and 6056. Section 6724 provides that no penalty will be imposed under section 6721 or 6722 with respect to any failure if it is shown that the failure is due to reasonable cause and not to willful neglect.

a. Automatic Extension of Time To Furnish Statements Under Section 6055

To reduce administrative burdens for reporting entities and the IRS, the 2021 proposed regulations provided that reporting entities would be granted an automatic extension of time, not to exceed 30 days after January 31, in which to furnish the written statements required by § 1.6055–1(g)(1). The 2021 proposed regulations also provided that if the extended furnishing date falls on a weekend or legal holiday, statements would be timely if furnished on the next business day.

Because this extension would be automatic, the 2021 proposed regulations would eliminate § 1.6055–1(g)(4)(i)(B)(*1*), which allows a reporting entity to make a written application to the IRS to request an extension of time to furnish the statement. The 2021 proposed regulations also would eliminate § 1.6055–1(g)(4)(i)(B)(*2*), under which the Commissioner may prescribe guidance or procedures for automatic extensions of time for furnishing written statements pursuant to section 6055.

Commenters expressed strong support for the proposal to amend § 1.6055–1(g)(4) to provide a permanent, automatic extension of time during which a provider of minimum essential coverage must furnish written statements to individuals. One commenter acknowledged that the addition of the permanent, automatic extension of time for reporting entities to furnish statements obviates the need for the IRS to provide other extensions of time to furnish statements in most circumstances. The commenter nonetheless requested that the final regulations retain the provisions in § 1.6055–1(g)(4)(i)(B)(*2*) allowing the Commissioner, in appropriate cases, to prescribe additional guidance or procedures for automatic extensions of time for furnishing written statements.

After consideration of the comments received, the Treasury Department and the IRS are adopting with one clarifying change the proposal for a permanent, automatic extension of time for furnishing written statements to individuals pursuant to § 1.6055–1(g). The 2021 proposed regulations provided that reporting entities would be granted an automatic extension of time not

[2] Notice 2016–04, 2016–3 I.R.B. 279 (Jan. 19, 2016); Notice 2016–70, 2016–49 I.R.B. 784 (Dec. 5, 2016); Notice 2018–06, 2018–3 I.R.B. 300 (Jan. 16, 2018); Notice 2018–94, 2018–51 I.R.B. 1042 (Dec. 17, 2018); Notice 2019–63, 2019–51 I.R.B. 1390 (Dec. 16, 2019); and Notice 2020–76, 2020–47 I.R.B. 1058 (Nov. 16, 2020).

exceeding 30 days in which to furnish required statements. To provide a clear, definite rule, these final regulations expressly provide a 30-day, automatic extension of time. The permanent, 30-day automatic extension of time to furnish written statements replaces § 1.6055–1(g)(4)(i) and provides adequate time for furnishing in most situations. Additionally, because a reporting entity may qualify for penalty relief pursuant to section 6724 by showing that a failure was due to reasonable cause and not to willful neglect, the request that § 1.6055–1(g)(4)(i)(B)(*2*) be retained is not adopted.

While expressing support for the proposed rule, one commenter requested that the IRS communicate the automatic extension clearly and directly to state governmental bodies that have their own individual health insurance mandates and reporting requirements. According to the commenter, some states impose requirements similar to the reporting and furnishing requirements of section 6055. In these cases, the commenter suggested that the deadlines should be coordinated or made the same.

The Treasury Department and the IRS intend to revise the instructions for Form 1094–B and Form 1095–B to communicate the final rule's permanent, 30-day automatic extension of time for furnishing the required statements. However, the Treasury Department and the IRS have no authority over state reporting and furnishing requirements. Whether state deadlines for filing returns or other documents relating to health coverage will align with the regulations is a question of state law. Accordingly, the Treasury Department and the IRS are not revising the regulations to coordinate with state reporting and furnishing requirements.

b. Automatic Extension of Time To Furnish Statements Under Section 6056

To reduce administrative burdens for ALE members and the IRS, the 2021 proposed regulations provided that ALE members would be granted an automatic extension of time, not to exceed 30 days after January 31, in which to furnish written statements to full-time employees. The 2021 proposed regulations also provided that if the extended furnishing date falls on a weekend or legal holiday, statements would be timely if furnished on the next business day.

Because this extension would be automatic, the 2021 proposed regulations would eliminate § 301.6056–1(g)(1)(ii)(A), which allows an ALE member to make a written application to the IRS to request an extension of time to furnish the statement. The 2021 proposed regulations also would eliminate § 1.6056–1(g)(1)(ii)(B), under which the Commissioner may prescribe guidance or procedures for automatic extensions of time for furnishing written statements pursuant to section 6056.

Commenters expressed strong support for the proposal to amend § 301.6056–1(g)(1) by providing a permanent automatic extension of time during which an ALE must furnish written statements to full-time employees. One commenter acknowledged that the addition of a permanent, automatic extension of time for reporting entities to furnish statements obviates the need for the IRS to provide other extensions of time to furnish statements in most circumstances. The commenter nonetheless requested that the final regulations retain the provisions in § 301.6056–1(g)(1)(ii)(B) allowing the Commissioner, in appropriate cases, to prescribe additional guidance or procedures for automatic extensions of time for furnishing written statements pursuant to section 6056.

After consideration of the comments received, the Treasury Department and the IRS are adopting with one clarifying change the proposal for a permanent, automatic extension of time for furnishing written statements to individuals pursuant to § 301.6056–1(g)(1). The 2021 proposed regulations provided that ALEs would be granted an automatic extension of time not exceeding 30 days in which to furnish required statements. To provide a clear, definite rule, these final regulations expressly provide a 30-day, automatic extension of time. The permanent, 30-day automatic extension of time to furnish written statements replaces § 301.6056–1(g)(1) and provides adequate time for furnishing in most situations. Additionally, because a reporting entity may qualify for penalty relief pursuant to section 6724 by showing that a failure was due to reasonable cause and not to willful neglect, the request that § 1.6056–1(g)(1)(ii)(B) be retained is not adopted.

c. Alternative Manner of Furnishing Statements Under Section 6055

The 2021 proposed regulations provided an alternative manner for a reporting entity to timely furnish Forms 1095–B to responsible individuals.[3] Under proposed § 1.6055–1(g)(4)(ii)(B), the reporting entity first would be required to post a clear and conspicuous notice on the entity's website stating that responsible individuals may receive a copy of their statement upon request. The notice would have to include an email address, a physical address to which a request may be sent, and a telephone number responsible individuals may use to contact a reporting entity with any questions. Additionally, the 2021 proposed regulations provided that the notice would satisfy the requirements for the alternative manner of furnishing if it were written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. Under the 2021 proposed regulations, a reporting entity would be required to retain the notice in the same location on its website until October 15 of the year following the calendar year to which the statement relates. The reporting entity would have to provide a Form 1095–B to a responsible individual within 30 days of the date of receipt of the individual's request. The proposed alternative manner of furnishing would apply only to taxable years when the individual shared responsibility payment amount under section 5000A(b) is zero.

Commenters generally supported the proposed amendments to § 1.6055–1(g) allowing reporting entities to satisfy the furnishing requirements for Form 1095–B by using the alternative manner of furnishing. One commenter requested that the regulations under section 6056 also be amended to extend the alternative manner of furnishing rule to ALEs. The commenter asserted that the information included on Form 1095–C has limited utility because it only helps full-time employees determine if they are eligible for the premium tax credit. The commenter noted the potential environmental benefits, specifically the reduced use of paper and resources, that would result by allowing for the furnishing of forms only upon request.

As noted in Notice 2020–76, the preamble to the 2021 proposed regulations, and earlier in this Summary of Comments and Explanation of Revisions, individuals no longer need Form 1095–B because the TCJA reduced the amount of the individual shared responsibility payment to zero. This change in Federal law caused the Treasury Department and the IRS to consider whether it was possible to amend the section 6055 regulations to reduce burdens on providers of minimum essential coverage, while providing for continued compliance

[3] Notice 2020–76 provided a similar alternative manner of furnishing statements for coverage year 2020.

with the unchanged statutory requirements of section 6055. Thus, the Treasury Department and the IRS proposed the alternative manner of furnishing Form 1095–B in recognition that the TCJA mooted the primary purpose for which individuals would need Form 1095–B.

However, as noted earlier, Form 1095–C serves a different purpose than Form 1095–B. Form 1095–C is used to administer the employer shared responsibility provisions of section 4980H and by certain full-time employees to help determine eligibility for the premium tax credit under section 36B. Neither the TCJA nor any other change in Federal law affects the employer shared responsibility provisions of section 4980H or the need for certain full-time employees to have information about their coverage offer to help determine eligibility for the premium tax credit under section 36B. Because the primary purpose for furnishing Form 1095–C is distinct from the primary purpose for furnishing Form 1095–B and was not affected by the changes made by the TCJA, the Treasury Department and the IRS conclude that it is not appropriate to amend the regulations under section 6056 to extend the alternative manner of furnishing rule to ALEs with regard to their full-time employees. However, the 2021 proposed regulations permitted, and these final regulations permit, ALEs to use the alternative manner of furnishing for non-employees and non-full-time employees for whom furnishing is required under § 1.6055–1.

The commenter that requested the alternative manner of furnishing for Form 1095–C also expressed concern about the environmental impact of providing Forms 1095–C on paper, but that concern does not take into account the potential mitigation of providing the information electronically.

One commenter requested that the Treasury Department and the IRS eliminate the section 6055 reporting requirement for years when the individual shared responsibility payment amount is zero. According to the commenter, under the proposed alternative manner of furnishing statements, health insurance issuers and plan sponsors must continue to maintain record-keeping systems to complete Forms 1095–B that must be provided upon request. The continued requirement to maintain records, according to the commenter, imposes burdens and costs. Thus, the commenter requested that the regulations be revised to eliminate the requirement to furnish Form 1095–B even upon request.

As noted, the TCJA reduced the individual shared responsibility payment amount to zero for months beginning after December 31, 2018; however, the TCJA did not amend any of the reporting or furnishing requirements under section 6055. Because Congress did not repeal or otherwise modify the reporting and furnishing requirements in section 6055, the Treasury Department and the IRS have determined that there is insufficient statutory authority to eliminate the Form 1095–B requirement. Accordingly, the commenter's suggestion is not adopted.

The final regulations include clarifying, non-substantive changes to the language in proposed § 1.6055–1(g)(4)(ii)(B) describing the alternative manner of furnishing. The final regulations also modify proposed § 1.6055–1(g)(4)(ii)(B)(*2*) to provide that a reporting entity using the alternative manner of furnishing must post a notice on its website by the date specified in § 1.6055–1(g)(4)(i) of these final regulations.

After consideration of the comments received, the Treasury Department and the IRS are adopting the proposed alternative manner of furnishing written statements to individuals under section 6055 with these clarifying changes.

III. Elimination of Transitional Good Faith Relief

The preamble to the 2021 proposed regulations described the genesis of the transitional good faith relief from penalties under sections 6721 and 6722, which the Treasury Department and the IRS provided to reporting entities in the preambles to the regulations under sections 6055 and 6056 [4] for calendar year 2015 and in IRS notices for calendar years 2016–2020.[5] Under the transitional good faith relief, the IRS did not impose penalties under sections 6721 and 6722 on reporting entities if the entities could show that they made good faith efforts to comply with the information reporting requirements. In Notice 2020–76, the Treasury Department and the IRS stated that 2020 was the last year that transitional good faith relief would be provided. Consistent with Notice 2020–76, the Treasury Department and the IRS reiterated in the preamble to the 2021 proposed regulations that the transitional good faith relief would be discontinued after 2020.

[4] *See* T.D. 9660, 79 FR 13220 (Mar. 10, 2014); T.D. 9661, 79 FR 13231 (Mar. 10, 2014).

[5] *See* Notice 2016–70; Notice 2018–06; Notice 2018–94; Notice 2019–63; and Notice 2020–76.

Two commenters requested that the Treasury Department and the IRS reconsider terminating the transitional good faith relief, with one of the commenters suggesting that the relief be retained at least for calendar years 2022, 2023, and 2024. Specifically, one commenter advocated for continuation of the relief because health coverage information reporting, especially for ALEs, is complicated, and many employers continue to make unintentional mistakes. The commenter asserted that the reasonable cause standard would be insufficient to relieve employers from significant penalties. The commenter requested, at a minimum, good faith penalty relief for small employers (as defined under applicable state law) that are ALEs.

The other commenter asked that the transitional good faith relief be retained because, although the individual shared responsibility payment amount is zero, several states have imposed individual mandates regarding health insurance that require reporting; instructions for IRS forms respecting reporting are modified annually; and plans have faced compliance problems caused by the COVID–19 pandemic.

As discussed in the preamble to the 2021 proposed regulations, the good faith relief offered beginning in calendar year 2015 was intended to be transitional to accommodate public concerns with implementing the new reporting requirements under the ACA. These reporting requirements have now been in place for seven years, and transitional relief is no longer appropriate. Also, the Treasury Department and the IRS are of the view that additional good faith relief is not necessary to address the commenters' concerns. The reasonable cause exception under section 6724 already provides adequate relief from penalties under sections 6721 and 6722 for filers who have reasonable cause for failing to timely or accurately complete their reporting requirements.

Applicability Date

The regulations under § 1.5000A–2 apply for months beginning after September 28, 2020. For months beginning on or after January 1, 2020, and before September 28, 2020, taxpayers may continue to rely on Notice 2020–66.

The regulations under §§ 1.6055–1 and 301.6056–1 apply for calendar years beginning after December 31, 2021. As discussed in the Proposed Applicability Date section of the 2021 proposed regulations, taxpayers may rely on §§ 1.6055–1 and 301.6056–1 of the 2021 proposed regulations for calendar years

beginning after December 31, 2020, and before December 15, 2022.

Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. It has been determined that a final regulatory flexibility analysis under 5 U.S.C. 604 is required for this final rule. The analysis is set forth under the heading ''Final Regulatory Flexibility Analysis.''

II. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

There is no collection of information contained in these final regulations. The collections of information contained in §§ 1.6055–1 and 301.6056–1 were previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and are associated with control numbers 1545–2251 (associated with Form 1095–C) and 1545–2252 (associated with Form 1095–B).

The Paperwork Reduction Act (44 U.S.C. 3501–3520) relates to information collection requests by any Government agency. A collection of information generally means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either (1) answers to identical questions posted to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States, or (2) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. 44 U.S.C. 3502(3). A collection of information is commonly referred to as a reporting, recordkeeping, or disclosure requirement.

These final regulations do not require a reporting entity to provide any information to the Federal Government, to maintain specific records, or to disclose any additional information that the reporting entity did not already have a requirement to disclose.

III. Final Regulatory Flexibility Analysis

When an agency either issues a final rule that follows a required notice of proposed rulemaking or issues a final interpretative rule involving the internal revenue laws that imposes a collection of information requirement on small entities as described in 5 U.S.C. 603(a), the Regulatory Flexibility Act (5 U.S.C. chapter 6) (Act) requires the agency to ''prepare a final regulatory flexibility analysis.'' A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), include the five elements listed in this final regulatory flexibility analysis. For purposes of this final regulatory flexibility analysis, a small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3)–(6). Small business size standards define whether a business is ''small'' and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). See title 13, part 121 of the Code of Federal Regulations (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* title 13, § 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

The Treasury Department and the IRS conclude that, although the overall impact of these final regulations will reduce the burden on small entities, these final regulations will impact a substantial number of small entities and the economic impact on those small entities may be significant. As a result, although the impact of these final regulations is positive for small entities, a final regulatory flexibility analysis is required.

A Statement of the Need for, and the Objectives of, the Final Rule

The final regulations under § 1.5000A–2 make permanent the guidance in Notice 2020–66 regarding whether certain Medicaid coverage of COVID–19 testing and diagnostic services is minimum essential coverage. These final regulations will ensure that taxpayers have accurate guidance when determining whether they have minimum essential coverage, which in turn will assist taxpayers in determining whether they qualify for the premium tax credit.

The principal objective of the final regulations under section 5000A is to provide certainty that Medicaid coverage limited to certain COVID–19 testing and diagnostic services is not minimum essential coverage. Minimum essential coverage is defined in section 5000A(f)(1) and generally includes coverage under the Medicaid program under title XIX of the Social Security Act. However, § 1.5000A–2(b)(2) lists certain types of services that are excluded from the definition of minimum essential coverage and these final regulations will add Medicaid coverage of certain COVID–19 testing and diagnostic services to that list. Thus, eligibility for this coverage will not preclude an individual from qualifying for the premium tax credit.

The final regulations under §§ 1.6055–1 and 301.6056–1 make permanent the extension of time to furnish Forms 1095–B and 1095–C to responsible individuals and employees that has been provided every calendar year since 2015. These final regulations will reduce the burden on reporting entities by extending the time to satisfy their furnishing obligations for certain health care coverage without the penalty under section 6722 being imposed. This extension should result in an increase in the timeliness and accuracy of the reporting.

The final regulations under § 1.6055–1 also allow reporting entities to furnish the statement required by section 6055 by providing notice on their website and by providing the statement to the responsible individual upon request. These final regulations will reduce the burden on reporting entities by providing a less costly option to satisfy the furnishing obligation under section 6055 for tax years when individuals do not need to report health coverage information on their Federal income tax returns.

The principal objectives of the final regulations under section 6055 are to (1) provide reporting entities under section 6055 and section 6056 with additional time to complete and furnish accurate statements to responsible individuals and full-time employees; and (2) to offer reporting entities a minimally burdensome option by which to furnish the statement required by section 6055. The legal basis for the extended due date for statements required under

section 6055 and section 6056 was originally set forth in the series of notices referenced in the Summary of Comments and Explanation of Revisions section of this preamble. In those notices, the Treasury Department and the IRS extended the dates for furnishing statements to responsible individuals and full-time employees and provided that reporting entities that satisfy the furnishing requirement by the extended due date will not be subject to penalties under sections 6721 and 6722. Section 6724(a) provides that no penalty is imposed under section 6721 or 6722 if it is shown that the failure is due to reasonable cause and not to willful neglect. The legal basis for the alternative manner of furnishing statements under section 6055 is in section 6055(b)(1)(A), which authorizes the Secretary to prescribe the form of the return that is required to be furnished under section 6055(c).

Summaries of the Significant Issues Raised in the Public Comments Responding to the Initial Regulatory Flexibility Analysis (IRFA) and of the Agency's Assessment of the Issues, and a Statement of Any Changes Made to the Rule as a Result of the Comments

No comments were received in response to the IRFA in the proposed regulations.

The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the SBA in Response to the Proposed Rule

Pursuant to section 7805(f) of the Code, the proposed regulations were submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why an Estimate Is Not Available

These final regulations apply to health insurance issuers, self-insured employers, government agencies, and other providers of minimum essential coverage required to furnish individual statements regarding such coverage under section 6055, and to ALE members that are required by section 6056 to furnish information relating to health insurance that the ALE offers to its full-time employees. An estimate of the number of small entities subject to these final regulations is not feasible because a correlation between small entities and this type of reporting cannot be made. These final regulations affect entities in all industries using any NAICS code.

A Description of the Projected Reporting, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

As discussed in the Paperwork Reduction Act section earlier in this preamble, these final regulations do not impose any reporting, recordkeeping, or similar requirements on any small entities that did not already apply to small entities.

A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting Any Alternative Adopted in the Final Rule and Why Other Significant Alternatives Affecting the Impact on Small Entities That the Agency Considered Were Rejected

The Treasury Department and the IRS are not aware of any steps that could be taken to minimize the economic impact on small entities that would also be consistent with the objectives of these final regulations and have determined that, without a legislative change, there are no viable alternatives to the provisions in the final regulations that would enable reporting entities to continue to satisfy their reporting obligations with a lesser burden. These final regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, these final regulations do not subject small entities to any requirements that are not also applicable to larger entities covered by the regulations.

Accordingly, the Treasury Department and the IRS conclude that the provisions of these final regulations will effectively promote sound tax administration. The additional exclusion from the definition of minimum essential coverage in § 1.5000A–2 will provide guidance to ensure that taxpayers can adequately determine whether they have minimum essential coverage that would preclude them from qualifying for a premium tax credit. An automatic extension of time to furnish statements under §§ 1.6055–1(g)(4)(i) and 301.6056–1(g)(1) will assist reporting entities to timely and accurately satisfy their statutory reporting obligations, while also reducing the cost and burden of having to request an extension. Last, the alternative manner of furnishing a statement in § 1.6055–1(g)(4)(ii)(B), at a time when the individual shared responsibility payment amount is zero, will also help reporting entities reduce costs. Accordingly, implementation of these final regulations will increase tax compliance by providing definitive guidance to individuals, will allow reporting entities the time needed to furnish timely and accurate statements under sections 6055 and 6056, and will allow reporting entities an alternative method of furnishing statements under section 6055 to minimize their production and distribution costs.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This final rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Drafting Information

The principal author of these final regulations is Gerald Semasek of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.5000A–2 is amended by revising paragraph (b)(2)(vii) and (viii); and adding paragraph (b)(2)(ix) to read as follows:

§ 1.5000A–2 Minimum essential coverage.

* * * * *

(b) * * *

(2) * * *

(vii) Coverage under 10 U.S.C. 1079(a), 1086(c)(1), or 1086(d)(1) that is solely limited to space available care in a facility of the uniformed services for individuals excluded from TRICARE coverage for care from private sector providers;

(viii) Coverage under 10 U.S.C. 1074a and 1074b for an injury, illness, or disease incurred or aggravated in the line of duty for individuals who are not on active duty; and

(ix) Medicaid coverage limited to COVID–19 testing and diagnostic services provided under section 6004(a)(3) of the Families First Coronavirus Response Act, Pub. L. 116–127, 134 Stat. 178 (March 18, 2020).

* * * * *

■ **Par. 3.** Section 1.5000A–5 is amended by revising paragraph (c) to read as follows:

§ 1.5000A–5 Administration and procedure.

* * * * *

(c) *Applicability date.* Except as otherwise provided in this paragraph (c), this section and §§ 1.5000A–1 through 1.5000A–4 apply for months beginning after December 31, 2013. Section 1.5000A–2(b)(2)(ix) applies for months beginning after September 28, 2020.

■ **Par. 4.** Section 1.6055–1 is amended by revising the first sentence of paragraph (g)(1) introductory text and paragraphs (g)(4) and (j) to read as follows:

§ 1.6055–1 Information reporting for minimum essential coverage.

* * * * *

(g) * * *

(1) * * * Except as otherwise provided in paragraph (g)(4)(ii)(B) of this section, every person required to file a return under this section must furnish to the responsible individual identified on the return a written statement. * * *

* * * * *

(4) *Time and manner for furnishing statements*—(i) *Time for furnishing.* Except as otherwise provided in this paragraph (g)(4)(i), a reporting entity must furnish the statements required under paragraph (g)(1) of this section on or before January 31 of the year following the calendar year in which the minimum essential coverage is provided. Reporting entities are granted an automatic, 30-day extension of time in which to furnish these statements.

(ii) *Manner of furnishing*—(A) *In general.* Except as otherwise provided in paragraph (g)(4)(ii)(B) of this section, if mailed, the statement must be sent to the responsible individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. For purposes of this paragraph (g)(4)(ii)(A), a reporting entity's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement. A reporting entity may furnish the statement electronically if the requirements of § 1.6055–2 are satisfied.

(B) *Alternative manner of furnishing.* A reporting entity shall be treated as furnishing the statement in a timely manner under this paragraph (g)(4) if the individual shared responsibility payment amount under section 5000A(c) for the calendar year in which the minimum essential coverage is provided is zero and the reporting entity satisfies the requirements in this paragraph (g)(4)(ii)(B). If the reporting entity is an applicable large employer member that sponsors a self-insured group health plan and makes a return in accordance with paragraph (f)(2)(i) of this section related to that plan, the applicable large employer member may use the alternative manner of furnishing described in this paragraph (g)(4)(ii)(B) for statements to non-full-time employees and non-employees who are enrolled in the applicable large employer's self-insured group health plan. The reporting entity satisfies the requirements of this paragraph (g)(4)(ii)(B) only if the reporting entity:

(*1*) Provides clear and conspicuous notice, in a location on its website that is reasonably accessible to all responsible individuals, stating that responsible individuals may receive a copy of their statement upon request. The notice must include an email address, a physical address to which a request for a statement may be sent, and a telephone number that responsible individuals may use to contact the reporting entity with any questions. A notice posted on a reporting entity's website satisfies the requirements of this paragraph (g)(4)(ii)(B)(*1*) if it is written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. For example, a reporting entity's website provides a clear and conspicuous notice if it includes a statement on the main page—or a link on the main page, reading ''Tax Information'', to a secondary page that includes a statement—in capital letters, ''IMPORTANT HEALTH COVERAGE TAX DOCUMENTS''; explains how responsible individuals may request a copy of Form 1095–B, Health Coverage (or, for an applicable large employer member that sponsors a self-insured group health plan and makes a return in accordance with paragraph (f)(2)(i) of this section, explains how non-full-time employees and non-employees who are enrolled in the plan may request a copy of Form 1095–C, Employer-Provided Health Insurance Offer and Coverage); and includes the reporting entity's email address, mailing address, and telephone number;

(*2*) Posts the notice on its website by the date specified in paragraph (g)(4)(i) of this section and retains the notice in the same location on its website through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday or legal holiday); and

(*3*) Furnishes the statement to a requesting responsible individual within 30 days of the date the request is received. To satisfy the requirement of this paragraph (g)(4)(ii)(B)(*3*), a reporting entity may furnish the statement electronically pursuant to § 1.6055–2(a)(2) through (6).

* * * * *

(j) *Applicability date.* Except as otherwise provided in this paragraph (j), this section applies for calendar years beginning after December 31, 2014. Paragraphs (g)(1) and (g)(4)(i) and (ii) of this section apply for calendar years beginning after December 31, 2021, but reporting entities may choose to apply

paragraphs (g)(1) and (g)(4)(i) and (ii) of this section for calendar years beginning after December 31, 2020. Except as otherwise provided in this paragraph (j), paragraph (g)(4), as contained in 26 CFR part 1 edition revised as of April 1, 2021, applies to calendar years ending after December 31, 2014, and beginning before January 1, 2022.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 6.** Section 301.6056–1 is amended by adding introductory text to paragraph (g)(1) and revising paragraph (m) to read as follows:

§ 301.6056–1 Rules relating to reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans.

* * * * *

(g) * * *

(1) *Time for furnishing.* Except as otherwise provided in this paragraph (g)(1), each statement required by this section for a calendar year must be furnished to a full-time employee on or before January 31 of the year succeeding the calendar year in accordance with applicable Internal Revenue Service procedures and instructions. Applicable large employers are granted an automatic, 30-day extension of time in which to furnish these statements.

* * * * *

(m) *Applicability date.* Except as otherwise provided in this paragraph (m), this section applies for calendar years beginning after December 31, 2014. Paragraph (g)(1) of this section applies for calendar years beginning after December 31, 2021, but applicable large employers may choose to apply paragraph (g)(1) of this section for calendar years beginning after December 31, 2020. Except as otherwise provided in this paragraph (m), paragraph (g)(1), as contained in 26 CFR part 1 edition revised as of April 1, 2021, applies to calendar years ending after December 31, 2014, and beginning before January 1, 2022.

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 6, 2022.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2022–27212 Filed 12–12–22; 4:15 pm]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the first quarter of 2023. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3829. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The first quarter 2023 interest assumptions will be 4.86 percent for the first 20 years following the valuation date and 4.70 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2022, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.96 percent in the select rate, and an increase of 1.05 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the first quarter of 2023.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, an entry for ''January–March 2023'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*	*	*			
January–March 2023	0.0486	1–20	0.0470	>20	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–27269 Filed 12–14–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On October 7, 2022, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective January 22, 2023. This final rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to implement the changes coincident with the price adjustments and other minor DMM changes.

DATES: *Effective Date:* January 22, 2023.

FOR FURTHER INFORMATION CONTACT: Doriane Harley at (202) 268–2537 or Dale Kennedy at (202) 268–6592.

SUPPLEMENTARY INFORMATION: On November 28, 2022, the PRC favorably reviewed the price adjustments proposed by the Postal Service. The price adjustments and DMM revisions are scheduled to become effective on January 22, 2023. Final prices are available under Docket No. R2023–1 (Order No. 6341) on the Postal Regulatory Commission's website at *www.prc.gov.*

Discount for Marketing Mail Flats on SCF Pallets

Currently, the Postal Service offers discounts for Carrier Route, High Density, High Density Plus, and Saturation Flats on 5-Digit or 5-Digit Scheme (direct) containers. Similar discounts would now be offered to flat-shaped Marketing Mail pieces on SCF Pallets. This proposed discount will be applicable to Automation and Nonautomation (3-Digit and 5-Digit Presort) Flats, Carrier Route Flats, High Density Flats, High Density Plus Flats and Saturation Flats on SCF Pallets regardless of the entry (None, DNDC, and DSCF). This preparation assures that no bundle sorting is required prior to the final processing plant.

Eliminate Zip Coding of Mailing Lists and Correction of Mailing Lists as AMS Products

Currently, the Postal Service offers mailing list services for manual correction of name and address on occupant lists and manual sorting of mailing lists on cards by 5-digit ZIP Code.

The Postal Service is proposing to discontinue these two services due to low volume usage and the availability of other Address Management products that allows more efficient access to the same information in an electronic format.

Elimination of Legacy Extra Service Labels

In an attempt to reduce duplicate labels, the Postal Service is eliminating the following legacy labels: PS 153 Signature Confirmation, PS 3800 Certified Mail, PS 3813 Insured Mail $500 and under, and PS 3813–P Insured Mail over $500. These labels will be replaced with IMpb compliant versions. Mailers that continue to use the eliminated labels will be subject to the IMpb Noncompliance Fee.

2023 Mailing Promotions

The Postal Service has been incenting mailers to integrate mobile technology and use innovative print techniques in commercial mail since 2012. These promotions have become an integral way for industry to try new things and innovate their mail campaigns. A 2023 Promotions Calendar is planned with opportunities for mailers to receive a postage discount by applying treatments or integrating technology in their mail campaigns.

Market Dominant comments on Proposed changes and USPS responses.

The Postal Service did not receive any formal comments on the October 2022 proposed rule (87 FR 63741–63743).

* * * * *

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

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.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, 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)

* * * * *

500 Additional Mailing Services

503 Extra Services

1.0 Basic Standards for All Extra Services

* * * * *

1.7 Forms and Labels

* * * * *

[*Add new 1.7.5 to read as follows:*]

1.7.5 Legacy Extra Service Labels

Certain legacy extra service labels are no longer valid and have been replaced with IMpb compliant versions that have a tracking number beginning with ''92'' or higher. Mailers using noncompliant versions of the following extra service labels will be subject to the IMpb Noncompliance Fee (see Notice 123—Price List):

a. PS 153 Signature Confirmation
b. PS 3800 Certified Mail
c. PS 3813 Insured Mail $500 and under
d. PS 3813–P Insured Mail over $500

* * * * *

507 Mailer Services

Overview

* * * * *

[*Revise the heading "8.0 Mailing List Services" to read as follows:*]

8.0 Address Management System

* * * * *

[*Replace current section 8.0 with new text to read as follows:*]

8.0 Address Management System

8.1 Address Management System Products and Fees

For Address Management System (AMS) products and fees, see Notice 123—Price List.

8.1.2 Carrier Route Information System

The official city delivery scheme, called the Carrier Route Information System, is available to mailers.

8.1.3 Address Changes to Election Boards and Voter Registration Commissions

For the designated fee, the USPS provides address changes to election boards and voter registration commissions.

8.2 Election Boards and Voter Registration Commissions

8.2.1 General

Election boards or voter registration commissions may use the "Return Service Requested" endorsement and/or the National Change of Address Linkage System (NCOA^Link) to maintain current address lists.

8.2.2 Fee Assessment

The fee for address changes provided to election boards and voter registration commissions is assessed for each Form 3575 submitted. The fee is collected on a per card basis regardless of the number of changes made on the card and whether the change concerns a person on the board's or commission's list of registrants. Instead of the actual forms, the USPS may supply facsimiles of the forms or copies of the information they contain at no additional fee.

8.2.3 Procedure

Election boards or voter registration commissions using permanent registration may obtain residential change-of-address information from Forms 3575:

a. An authorized official of the board or commission must sign and submit to the manager, address management systems (district), a written request that lists the Post Offices for which change-of-address information is desired.

b. If the request is approved, an agreement must be obtained from and signed by an authorized official of the board or commission detailing the terms under which the change-of-address information is to be released.

c. The board or commission receives the requested information from the postmasters of the listed Post Offices and pays those postmasters the applicable fees.

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.3 USPS Marketing Mail or Parcel Select Lightweight—Bundles, Sacks, or Trays

* * * * *

[*Revise the text of 8.10.3e to read as follows*]

e. SCF, required, permitted for bundles, sacks, and trays. Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L005, or L051 for Parcel Select Lightweight sacks. Mailers may, at their option, place AADC trays on SCF pallets when the tray's "label to" 3-digit ZIP Code (from L801) is within that SCF's service area. Mailers may also, at their option, place mixed ADC or mixed AADC trays, labeled per L010, on an SCF pallet entered at the SCF facility responsible for the processing of mixed ADC or mixed AADC trays for that NDC/ASF facility. The SCF Pallet discount applies to 3-Digit, 5-Digit, Carrier Route, High Density, High Density Plus, Saturation (including EDDM—Not Retail) USPS Marketing Mail flat shaped pieces on a SCF pallet entered at an Origin (None), DNDC, or DSCF entry. SCF pallet discount does not apply to Marketing Mail letters or parcels. Labeling: * * *

Notice 123 (Price List)

[*Revise prices as applicable.*]

* * * * *

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

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26973 Filed 12–14–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–OLEM–2021–0946; FRL–9334.1–01–OLEM]

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards developing organization. Specifically, this final rule amends the All Appropriate Inquiries Rule (AAI rule) to reference ASTM International's E1527–21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act, and to remove after one year recognition of the previous version of that standard, ASTM E1527–13, as compliant with the AAI rule.

DATES: This rule is effective on February 13, 2023.

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

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

Table of Contents

I. Does this action apply to me?
II. Statutory Authority
III. Background
IV. Summary of Comments
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I. Does this action apply to me?

This action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527–21 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA). This rule does not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527–13 ''Standard Practice for Phase I Environmental Site Assessments'' for up to one year after this rule becomes effective, use the ASTM E2247–16 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' or use the standard recognized in this final rule, the ASTM E1527–21 standard, to comply with the all appropriate inquiries provision of CERCLA.

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

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

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

II. Statutory Authority

This rule amends the All Appropriate Inquiries Rule setting Federal standards for the conduct of ''all appropriate inquiries'' at 40 CFR part 312. The All Appropriate Inquiries Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

III. Background

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

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

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

On March 14, 2022, EPA published a direct final rule (87 FR 14174) to amend the All Appropriate Inquiries Rule to reference ASTM E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' and allow for its use to satisfy the requirements of the All Appropriate Inquiries Rule. A companion proposed rule, also published on March 14, 2022, invited comment on the direct final rule and stated that if EPA received adverse comment on the proposal to reference the ASTM E1527–21 standard, the Agency would withdraw the direct final rule. EPA received adverse comments on that action and published a notification of withdrawal of the direct final rule on May 2, 2022 (87 FR 25572). In this document, EPA is finalizing the amendment to the All Appropriate Inquiries Rule referencing the ASTM E1527–21 standard practice and addressing the comments received in response to the March 14, 2022 proposed rule.

IV. Summary of Comments

EPA received thirteen comments on the proposed rule published March 14, 2022. EPA developed a Response to Comments document and placed it in the docket for this action. The comments and EPA's responses are summarized here. Most commenters supported the Agency's proposed action to amend the All Appropriate Inquiries Rule to add a reference to ASTM

International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act. Several commenters raised concerns related to the Agency's decision to continue to recognize a previous ASTM standard, ASTM E1527–13, as compliant with the All Appropriate Inquiries Rule. Commenters pointed out that the previous version of the ASTM standard, ASTM E1527–13, will sunset and will no longer be available from ASTM International. Commenters pointed out that the revised standard, ASTM E1527–21, was developed with input from industry professionals, users, and regulators and its updated provisions offer positive benefits to stakeholders. In addition, commenters asserted that the updated standard now represents ''good commercial and customary business practice,'' and therefore should replace the current ASTM E1527–13 Phase I Environmental Site Assessment standard referenced by EPA, rather than merely being added as an additionally referenced standard. Other commenters stated that EPA's continued acceptance of the 2013 version of the ASTM E1527 standard will create confusion within the marketplace because users will need to unnecessarily compare the costs and benefits of the use of the two standards when receiving multiple bids from potential contractors before environmental site assessment. EPA recognizes the commenters' concerns.

In response to concerns raised by commenters regarding the potential confusion associated with the Agency's recognition of a historical standard no longer recognized by ASTM International as current, or no longer reflecting its current consensus-based, or customary business standard, the Agency will remove its reference to the ASTM E1527–13 Standard Practice for Environmental Site Assessments. To provide parties with an adequate opportunity to complete AAI investigations that may be on-going and to allow all parties sufficient notice to become familiar with the updated industry standard (ASTM E1527–21), the Agency is providing for a sunset period for the removal of its recognition of the historic standard (ASTM E1527–13) as compliant with all appropriate inquiries. The sunset period for removal of the reference to the ASTM E1527–13 Standard Practice for Environmental Site Assessments is one year from publication of this final rule. A Phase 1 Environmental Site Assessment completed before that date using ASTM E1527–13 will be recognized as compliant with the All Appropriate Inquiries Rule.

One commenter requested that EPA provide a formal notice and comment opportunity on the ASTM E1527–21 Phase I Environmental Site Assessment Process. The commenter also stated that the reference to ''emerging contaminants'' in the ASTM E1527–21 standard is an ''out of scope'' consideration that may lead to additional potential CERCLA liability prematurely for landowners and potential buyers. In the March 14 direct final rule and the accompanying proposed rule, EPA clearly stated that it was not requesting comment on the ASTM standard. The ASTM standard is not an EPA regulation, and its use is not required to comply with the All Appropriate Inquiries Rule or any other EPA regulations.

Industry standards may include elements that are not within the scope of the All Appropriate Inquiries Rule. Use of the ASTM E1527–21 standard is not required for compliance with the All Appropriate Inquiries Rule. Therefore, EPA does not consider these additional elements as a reason to avoid recognition of the revised E1527–21 standard as compliant with the All Appropriate Inquiries Rule.

Two commenters submitted requests for modifications to the ASTM E1527–21 standard. One commenter requested changes to the standard's requirements for environmental lien searches and to the definitions of ''recognized environmental conditions.'' Another commenter requested a modification to the definition of ''property use limitation'' as it is used in the ASTM E1527–21 standard. The ASTM E1527–21 is not an EPA standard and the Agency stated in the proposed rule that it was not requesting comments on the ASTM standard. Requests to modify the ASTM standard should be directed to ASTM. Use of the ASTM standard is not required to comply with the All Appropriate Inquiries Rule.

V. What action is the EPA taking?

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

With this action, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered in compliance with the requirements for all appropriate inquiries, if such parties comply with the procedures provided in the ASTM E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.''

The Agency notes that this action does not require any party to use the ASTM E1527–21 standard. Any party conducting all appropriate inquiries to comply with CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections, or a brownfields site assessment under CERCLA Section 104(k), may follow the provisions of the All Appropriate Inquiries Rule at 40 CFR part 312. This action merely allows for the option of using ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' by those parties purchasing potentially contaminated properties in lieu of following the specific requirements of the All Appropriate Inquiries Rule.

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

This action also includes the removal of the current reference in the All Appropriate Inquiries Rule to the ASTM E1527–13 Standard Practice for Environmental Site Assessments as compliant with all appropriate inquiries. The removal of the reference to the historic standard as compliant with the all appropriate inquiries requirements will take effect one year following publication of this final rule.

This action includes no changes to the All Appropriate Inquiries Rule other than to add a reference to the new

ASTM E1527–21 standard and remove the current reference to the historic ASTM E1527–13 standard as compliant with all appropriate inquiries. With this final rule, EPA is recognizing the ASTM E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' as compliant with the all appropriate inquiries requirements. The reference to the ASTM E1527–13 standard as compliant with the all appropriate inquiries requirements will be removed from the reference section of the AAI (40 CFR 312.11) one year following publication of this final rule.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action is exempt from review under Executive Order 12866, this rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; 15 U.S.C. 272) (NTTAA) apply. The NTTAA was signed into law on March 7, 1996, and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together Federal agencies as well as state and local governments to achieve greater reliance on voluntary consensus standards and decrease dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulations; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply government needs for goods and services. The Act requires that Federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), whenever possible in lieu of creating proprietary, non-consensus standards.

This action is compliant with the spirit and requirements of the NTTAA. This action allows for the use of the ASTM International standard known as Standard E1527–21 and entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' By taking this action, EPA is fulfilling the intent and requirements of NTTAA.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

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

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES

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

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

Subpart B—Definitions and References

■ 2. Section 312.11 is amended by:

■ a. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

■ b. Adding a new paragraph (a); and

■ c. Revising newly redesignated paragraph (c).

The addition and revision read as follows:

§ 312.11 References.

* * * * *

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

* * * * *

(c) Until February 13, 2024, the procedures of ASTM International Standard E1527–13 entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' This standard is available from ASTM International at *www.astm.org,* 1–610–832–9585.

[FR Doc. 2022–27044 Filed 12–14–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–115; RM–11921; DA 22–1232; FR ID 117273]

Television Broadcasting Services Butte, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 10, 2022, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KXLF–TV (Station), channel 5, Butte, Montana, requesting the substitution of channel 15 for channel 5 at Butte in the Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 15 for channel 5 at Butte.

DATES: Effective December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 87 FR 16157 on March 22, 2022. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 15. No other comments were filed. We believe the public interest would be served by substituting channel 15 for channel 5 at Butte, Montana. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on VHF channel 5, and the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service. The Engineering Statement provided with the Petition confirmed that the proposed channel 15 contour would continue to reach virtually all of the population within the Station's current service area and fully cover the city of Butte. An analysis using the Commission's *TVStudy* software tool indicates that KXLF–TV's move from channel 5 to channel 15 is predicted to create an area where approximately 3,000 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned CBS affiliate KPAX–TV, Missoula, Montana; KBZK(TV), Bozeman, Montana; and KRTV(TV), Great Falls, Montana. Once those other sources of CBS programming are factored into the loss analysis, the new loss area that would be created by the proposed channel substitution would contain less than 500 persons, a level of service loss the Commission considers to be *de minimis.*

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 22–115; RM–11921; DA 22–1232, adopted November 29, 2022, and released November 29, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments, under Montana, by revising the entry for Butte to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * *	* *
Montana	
* * *	* *
Butte	15, 19, 20, 24.
* * *	* *

[FR Doc. 2022–27159 Filed 12–14–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–116; RM–11922; DA 22–1233; FR ID 117287]

Television Broadcasting Services Missoula, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 10, 2022, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KPAX–TV (Station), channel 7, Missoula, Montana, requesting the substitution of channel 25 for channel 7 at Missoula in the Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends Federal Communications Commission (FCC or Commission) regulations to substitute channel 25 for channel 7 at Missoula.

DATES: Effective December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 87 FR 16156 on March 22, 2022. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 25. No other comments were filed.

The *Report and Order* substitutes channel 25 for channel 7 at Missoula, Montana. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on VHF channel 7, and the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service. The Engineering Statement provided with the Petition confirmed that the proposed channel 25 contour would continue to reach virtually all of the population

within the Station's current service area and fully cover the city of Missoula. An analysis using the Commission's *TVStudy* software tool indicates that KPAX–TV's move from channel 7 to channel 25 is predicted to create a small area where 444 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned television station KXLF–TV, Butte, Montana, which is also a CBS affiliate, and reduces the number who are predicted to lose CBS service to only 121 persons, which is a level of service loss the Commission considers to be *de minimis.* Concurrence from the Canadian government was required and has been obtained. This is a synopsis of the Commission's *Report and Order,* MB Docket No. 22–116; RM–11922; DA 22–1233, adopted November 29, 2022, and released November 29, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments, under Montana, by revising the entry for Missoula to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * *	* *
Montana	
* * *	* *
Missoula	*11, 20, 23, 25.
* * *	* *

[FR Doc. 2022–27039 Filed 12–14–22; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515, 516 and 552

[GSAR Case 2021–G502; Docket No. 2022–0021; Sequence No. 1]

RIN 3090–AK70

General Services Administration Acquisition Regulation GSAR); GSAR Clause Matrix Update

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to make editorial changes. This technical amendment includes correcting GSAR provision and clause designation and prescription errors as well as fixing mistakes regarding the incorporation of GSAR provisions and clauses.

DATES: Effective: December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Carlson or Mr. Bryon Boyer, GSA Acquisition Policy Division, for clarification of content at 817–850–5580 or email *gsarpolicy@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2021–G502.

SUPPLEMENTARY INFORMATION:

I. Discussion and Analysis

This final rule amends the GSAR to make editorial corrections. As part of GSA's regulatory reform efforts, GSA made updates to the GSAM Matrix of Provisions and Clauses. During this process, designation and prescription errors connected to these GSAR clauses and provisions were found. This technical amendment corrects these designations and prescription errors and revises language regarding the incorporation of these provisions and clauses. There are no significant content changes to the GSAR as a result of this technical amendment.

II. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a major rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule under 5 U.S.C. 804(2).

IV. Publication for Public Comment Is Not Required

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy,

regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because it is a technical amendment that does not have a significant effect or impose any new requirements on contractors or offerors. This rule simply makes editorial changes.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section IV. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VI. Paperwork Reduction Act

This final rule does not contain any information collection requirements under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 515, 516, and 552

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 515, 516, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 515, 516, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 515—CONTRACTING BY NEGOTIATION

515.408 [Amended]

■ 2. Amend section 515.408 by removing from paragraph (d) ''552.215–72'' and adding ''552.215–75'' in its place.

PART 516—TYPES OF CONTRACT

■ 3. Amend section 516.506 by adding a sentence at the end of paragraph (b) to read as follows:

516.506 Solicitation provisions and contract clauses.

* * * * *

(b) * * * Use 552.216–73 Alternate I when 552.216–72 Alternate I is prescribed.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 552.102 by—

■ a. Removing from paragraph (b) introductory text the word ''not''; and

■ b. Revising paragraph (b)(3).

The revision reads as follows:

552.102 Incorporating provisions and clauses.

* * * * *

(b) * * *

(3) It is identified as a deviation that has not been incorporated into the GSAM or FAR, as applicable (*e.g.,* acquisition letter) (see 501.370(a)); or''

* * * * *

■ 5. In section 552.236–21 amend Alternate I by—

■ a. Revising the date; and

■ c. Removing from the introductory text ''536.521'' and adding ''536.521(a)'' in its place.

The revision reads as follows:

552.236–21 Specifications and Drawings for Construction.

* * * * *

Alternate I (DEC 2022) * * *

* * * * *

■ 6. In section 552.236–71 amend Alternate I by—

■ a. Revising the date; and

■ b. In the introductory text removing ''536.571'' and adding ''536.571(a) in its place.

The revision reads as follows:

552.236–71 Contractor Responsibilities.

* * * * *

Alternate I (DEC 2022) * * *

* * * * *

■ 7. In section 552.238–70 amend Alternate I by—

■ a. Revising the date; and

■ b. In the introductory text removing ''538.273(a)(1)(i)'' and ''provision.'' and adding ''538.273(a)(1)'' and ''provision:'' in their places, respectively.

The revision reads as follows:

552.238–70 Cover Page for Worldwide Federal Supply Schedules

* * * * *

Alternate I (DEC 2022) * * *

* * * * *

[FR Doc. 2022–26703 Filed 12–14–22; 8:45 am]

BILLING CODE 6820–EP–P

Proposed Rules

Federal Register

Vol. 87, No. 240

Thursday, December 15, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 126 and 134

RIN 3245–AH88

HUBZone Appeal Process

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend the rules of practice of its Office of Hearings and Appeals (OHA) and the Historically Underutilized Business Zone (HUBZone) Program. Specifically, SBA proposes to implement procedures authorizing appeals to OHA from protest determinations regarding the status of a concern as a certified HUBZone small business concern. These amendments are issued in accordance with provisions of the National Defense Authorization Act for Fiscal Year 2022.

DATES: Comments will be accepted until January 17, 2023.

ADDRESSES: You may submit comments, identified by RIN 3245–AH88, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail (for paper, disk, or CD–ROM submissions):* Laura Maas, HUBZone Program, 409 Third Street SW, Washington, DC 20416.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the comments to *laura.maas@sba.gov* and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

FOR FURTHER INFORMATION CONTACT: Laura Maas, HUBZone Program, 202–205–7341, *laura.maas@sba.gov.* This phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

Section 864 of the National Defense Authorization Act for Fiscal Year 2022 (NDAA 2022) authorizes SBA's Office of Hearings and Appeals (OHA) to decide all appeals from HUBZone status protest determinations, which are currently decided by the Associate Administrator of Government Contracting and Business Development. Section 864 requires SBA to publish a rule implementing this authority by December 27, 2022. To implement this statutory requirement, this proposed rule would revise the HUBZone regulations at 13 CFR 126.805 to specify that HUBZone appeals are processed by OHA in accordance with the procedures in part 134. This proposed rule would amend the regulations pertaining to OHA's jurisdiction at subparts A and B of 13 CFR part 134 to include appeals from HUBZone status protest determinations. Finally, the proposed rule would create a new subpart M in 13 CFR part 134 to set out the rules of practice for appeals from HUBZone status protest determinations.

Section-By-Section Analysis

A. Section 126.103

SBA proposes to amend the HUBZone regulations at § 126.103 by deleting the definition for ''AA/GC&BD.'' The only references to this role in the HUBZone regulations are in relation to HUBZone status protest appeals, and the AA/GCBD will no longer have this responsibility.

B. Sections 126.309, 126.803

SBA proposes to amend the HUBZone regulations at §§ 126.309 and 126.803 to change the references to appeal decisions made by the AA/GCBD to appeal decisions made by OHA.

C. Section 126.805

SBA proposes to revise § 126.805, which addresses the procedures for appeals of HUBZone status protest determinations, to provide that such appeals may be filed in accordance with part 134 of title 13 of the Code of Federal Regulations.

D. 13 CFR Part 134 Subparts A and B

SBA proposes to amend § 134.102, the rules for establishing OHA jurisdiction, to add appeals from HUBZone status protest determinations, as a new type of proceeding over which OHA would have jurisdiction. New § 134.102(x) would allow OHA to hear appeals from HUBZone determinations.

SBA also proposes to amend § 134.201(b) by adding a new paragraph (10) to include appeals from HUBZone status protest determinations. As a result of this new paragraph, existing § 134.201(b)(10) would be redesignated as § 134.201(b)(11).

E. 13 CFR Part 134 Subpart M

The rule proposes a new subpart M to cover the procedures for filing appeals of HUBZone status protest determinations.

Proposed § 134.1301 would provide that appeals under this new subpart would include any of the grounds for a HUBZone status protest specified in § 126.801 of the HUBZone regulations. Paragraph (b) would state that the provisions of subparts A and B of part 134 also apply to appeals of HUBZone status protest determinations. Paragraph (c) would state that appeals from HUBZone status protest determinations are separate from size determinations.

Proposed § 134.1302 would establish standing to file an appeal from a HUBZone status protest determination.

Proposed § 134.1303 would establish timeliness for filing an appeal from a HUBZone status protest determination. SBA proposes that such appeals must be filed within ten (10) business days after the appellant receives the protest determination.

Proposed § 134.1304 would provide that if a timely appeal of a HUBZone status protest determination is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered. This section would also provide that where an appeal is filed before contract award,

the contracting officer must withhold award until the appellate decision is rendered, unless the contracting officer has determined that award and performance of the contract is in the best interests of the government.

Proposed § 134.1305(a) would provide that an appeal petition must include the following: a copy of the protest determination; the date the appellant received the protest determination; a statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB; a full and specific statement as to why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with argument supporting such allegation; the solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer; and the name, address, telephone number, facsimile number, and signature of the appellant or its attorney. Paragraph (b) would require that the appellant serve copies of the appeal upon the D/HUB, the contracting officer, protested concern or the protester, and SBA's Associate General Counsel for Procurement Law. Paragraph (c) would require all appeal petitions to include a certificate of service. Paragraph (d) would authorize OHA to dismiss appeal petitions that do not meet all the requirements of § 134.1305.

Proposed § 134.1306 would apply the provisions in § 134.204, regarding the service and filing requirements of all pleadings and submissions.

Proposed § 134.1307 would require the D/HUB to send OHA the entire case file relating to the protest decision upon receipt of the appeal petition.

Proposed § 134.1308 would provide that the standard of review for an appeal of a HUBZone status protest determination is whether the D/HUB's determination was based on clear error of fact or law, and that the appellant bears the burden of proof by a preponderance of the evidence.

Proposed § 134.1309 would provide that an appeal from a HUBZone status protest determination will be dismissed if the appeal is untimely under § 134.1303, or if the matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters.

Proposed § 134.1310 would permit responses to the appeal to be filed within fifteen business days after service of the appeal petition.

Proposed § 134.1311 would not allow for discovery or oral hearings in appeals from HUBZone status protest determinations.

Proposed § 134.1312 would prohibit new evidence in appeals from HUBZone status protest determinations.

Proposed § 134.1313 would provide that the record for a HUBZone status protest appeal will close when the time to file a response to an appeal petition expires.

Proposed § 134.1314 would provide that OHA will decide an appeal within 45 calendar days after the close of record.

Proposed § 134.1315 would provide that OHA's decision is the final agency decision and would provide that the effects of the decision on the procurement at issue are explained in 13 CFR 126.803(e).

Proposed § 134.1316 would provide that OHA may reconsider an appeal decision within twenty (20) calendar days after the decision is issued, or OHA may remand a proceeding to the D/HUB for a new HUBZone status protest determination.

Compliance With Executive Orders 12866, 12988, 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act (5 U.S.C. 801–808)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order No. 12866. This proposed rule would amend the rules of practice for the SBA's OHA to implement procedures for appeals from HUBZone status protest determinations. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. 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, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, requires Federal agencies to prepare an initial regulatory flexibility analysis (IRFA) to consider the potential impact of the regulations on small entities. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would revise the regulations governing cases before SBA's Office of Hearings and Appeals (OHA), SBA's administrative tribunal. These regulations are procedural by nature. Specifically, the proposed rule would establish rules of practice for the SBA's OHA to hear appeals from HUBZone status protest determinations. While SBA does not anticipate that this proposed rule would have a significant economic impact on any small business, we do welcome comments from any small business setting out how and to what degree this proposed rule would affect it economically. Therefore, the Administrator of SBA certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Congressional Review Act, 5 U.S.C. Ch. 8

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional

Review Act or CRA, 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. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule is not subject to the 60-day restriction.

List of Subjects

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and function (Government agencies).

For the reasons set forth in the preamble, SBA proposes to amend parts 126 and 134 of title 13 of the Code of Federal Regulations as follows:

PART 126—HUBZONE PROGRAM

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

§ 126.103 [Amended]

■ 2. Amend § 126.103 by removing the definition of ''AA/GC&BD''.

§ 126.309 [Amended]

■ 3. Amend § 126.309 by removing ''(the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD)'' and adding in its place ''(*i.e.,* the D/HUB's decision if the protest determination is not appealed, or OHA's decision if the protest determination is appealed)''.

■ 4. Amend § 126.803 by:

■ a. In paragraph (e), revising the introductory text;

■ b. In paragraph (e)(1)(ii)(B), removing ''the AA/GCBD'' and adding in its place ''OHA'';

■ c. In paragraph (e)(1)(iii), removing ''(*i.e.,* the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed)'' and adding in its place ''(*i.e.,* the D/HUB's decision if the protest determination is not appealed, or OHA's decision if the protest determination is appealed)'';

■ d. In paragraph (e)(2)(ii), removing ''the AA/GCBD'' and adding in its place ''OHA''; and

■ e. In paragraph (e)(3), removing ''(the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed)'' and adding in its place ''(*i.e.,* the D/HUB's decision if the protest determination is not appealed, or OHA's decision if the protest determination is appealed)''.

The revision reads as follows:

§ 126.803 How will SBA process a HUBZone status protest and what are the possible outcomes?

* * * * *

(e) * * * The determination is effective immediately and is final, unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to part 134 of this chapter.

* * * * *

■ 5. Revise § 126.805 to read as follows:

§ 126.805 What are the procedures for appeals of HUBZone status protest determinations?

The protested concern, the protester, or the contracting officer may file an appeal of a HUBZone status protest determination with SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 6. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657a, 657t and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 15 U.S.C. 657f.
Subpart K issued under 15 U.S.C. 657f.
Subpart L issued under 15 U.S.C. 636(a)(36); 636(a)(37); 636m.
Subpart M issued under 15 U.S.C. 657a; Sec. 864, Pub. L. 117–81, 135 Stat. 1852 (15 U.S.C. 634 note).

■ 7. Amend § 134.102 by:

■ a. Removing the word ''and'' at the end of paragraph (v);

■ b. Removing the period at the end of paragraph (w) and adding ''; and'' in its place; and

■ c. Adding paragraph (x).

The addition reads as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(x) Appeals from HUBZone status protest determinations under part 126 of this chapter.

■ 8. Amend § 134.201 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(9);

■ b. Redesignating paragraph (b)(10) as paragraph (b)(11); and

■ c. Adding a new paragraph (b)(10).

The addition reads as follows:

§ 134.201 Scope of the rules in this subpart.

* * * * *

(b) * * *

(10) For appeals of protest determinations regarding the status of a concern as a certified HUBZone small business concern, in subpart M of this part; and

* * * * *

■ 8. Add subpart M to read as follows:

Subpart M—Rules of Practice for Appeals of Protest Determinations Regarding the Status of a Concern as a Certified HUBZone Small Business Concern

Sec.

134.1301 What is the scope of the rules in this subpart?
134.1302 Who may appeal a HUBZone status protest determination?
134.1303 What time limits apply to filing an appeal from a HUBZone status protest determination?
134.1304 What are the effects of the filing of an appeal on the procurement at issue?
134.1305 What are the requirements for an appeal petition?
134.1306 What are the service and filing requirements?
134.1307 What are the requirements for transmitting the protest file?
134.1308 What is the standard of review?
134.1309 When will a Judge dismiss an appeal?
134.1310 Who can file a response to an appeal petition and when must such a response be filed?
134.1311 Will the Judge permit discovery and oral hearings?
134.1312 What are the limitations on the introduction of new evidence?
134.1313 When is the record closed?
134.1314 When must the Judge issue his or her decision?
134.1315 What are the effects of the Judge's decision on the procurement at issue?
134.1316 Can a Judge reconsider an appeal decision?

§ 134.1301 What is the scope of the rules in this subpart?

(a) The rules of practice in this subpart apply to all appeals to OHA from formal protest determinations made by the Director of SBA's Office of HUBZone (D/HUB) in connection with a HUBZone status protest. Appeals under this subpart include any of the grounds for a HUBZone status protest specified in § 126.801 of this chapter, as well as appeals from determinations by the D/HUB that the protest was

premature, untimely, nonspecific, or not based upon protestable allegations.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by subpart C of this part.

§ 134.1302 Who may appeal a HUBZone status protest determination?

Appeals from HUBZone status protest determinations may be filed with OHA by the protested concern, the protester, or the contracting officer responsible for the procurement affected by the protest determination.

§ 134.1303 What time limits apply to filing an appeal from a HUBZone status protest determination?

Appeals from a HUBZone status protest determination must be commenced by filing and serving an appeal petition within ten (10) business days after the appellant receives the HUBZone status protest determination (*see* § 134.204 for filing and service requirements). OHA shall dismiss any untimely appeal.

§ 134.1304 What are the effects of the filing of an appeal on the procurement at issue?

(a) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(b) If a timely appeal is filed before contract award, the contracting officer must withhold award until the appellate decision is rendered, unless the contracting officer has determined that award and performance of the contract is in the best interests of the government.

§ 134.1305 What are the requirements for an appeal petition?

(a) *Format.* An appeal from a HUBZone status protest determination must be in writing. There is no required format for an appeal petition. However, it must include the following information:

(1) A copy of the protest determination;

(2) The date the appellant received the protest determination;

(3) A statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB;

(4) A full and specific statement as to why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with argument supporting such allegation;

(5) The solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer; and

(6) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* The appellant must serve copies of the entire appeal petition upon each of the following:

(1) The D/HUB at *hzappeals@sba.gov;*

(2) The contracting officer responsible for the procurement affected by a HUBZone determination;

(3) The protested concern (the business concern whose HUBZone status is at issue) or the protester; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law at *OPLservice@sba.gov.*

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(d) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his/her own initiative or upon motion of a respondent.

§ 134.1306 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart, unless otherwise indicated in this subpart.

§ 134.1307 What are the requirements for transmitting the protest file?

Upon receipt of an appeal petition, the D/HUB will send to OHA a copy of the protest file relating to that determination. The D/HUB will certify and authenticate that the protest file, to the best of his or her knowledge, is a true and correct copy of the protest file.

§ 134.1308 What is the standard of review?

The standard of review for an appeal of a HUBZone status protest determination is whether the D/HUB's determination was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

§ 134.1309 When will a Judge dismiss an appeal?

The presiding Judge must dismiss the appeal if:

(a) The appeal is untimely filed under § 134.1303;

(b) The appeal does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination; or

(c) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters; however, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.1310 Who can file a response to an appeal petition and when must such a response be filed?

(a) *Who may respond.* Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. The response should present arguments related to the issues presented on appeal.

(b) *Time limits.* If a person decides to file a response, the response must be filed within fifteen (15) business days after service of the appeal petition.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.1305.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.1311 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted, and oral hearings will not be held.

§ 134.1312 What are the limitations on the introduction of new evidence?

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition, and response(s) filed thereto.

§ 134.1313 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to § 134.1310.

§ 134.1314 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within forty-five (45) calendar days after close of the record.

§ 134.1315 What are the effects of the Judge's decision on the procurement at issue?

The Judge's decision is the final agency decision and becomes effective upon issuance. For the effects of the decision on the procurement at issue, see § 126.803(e) of this chapter.

§ 134.1316 Can a Judge reconsider an appeal decision?

(a) Any party who has appeared in the proceeding, or SBA, may request reconsideration of the OHA appeal decision by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative, within twenty (20) calendar days after issuance of the written decision.

(b) The Judge may remand a proceeding to the D/HUB for a new HUBZone status protest determination if the D/HUB fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new HUBZone status protest determination.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–26873 Filed 12–14–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1582; Project Identifier MCAI–2022–01232–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by an in-service inspection that found overhead storage compartment (OHSC) crash rods that were disconnected. This proposed AD would require a one-time detailed inspection of the OHSC crash rods and, depending on findings, corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 30, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1582; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1582.
- For Airbus service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* website airbus.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1582; Project Identifier MCAI–2022–01232–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0186, dated September 13, 2022 (EASA AD 2022–0186) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that an in-service inspection found OHSC crash rods that were disconnected. The investigation

conducted by the manufacturer determined that this incorrect installation was due to human error in the final assembly line. This condition, if not corrected, could affect the structural integrity of the OHSC under emergency landing loads, which could lead to OHSC detachment, resulting in injury to occupants and blocking an escape path during an emergency evacuation.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1582.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0186 specifies procedures for a one-time detailed inspection for any defect (*i.e.,* OHSC crash rod is disconnected or the quick connections are unlocked) of the OHSC crash rods, and, depending on findings, corrective actions (*i.e.,* installation or locking of the quick connections on the OHSC crash rods.

The FAA also reviewed Airbus Service Bulletin A350–53–P074, dated July 29, 2022, which identifies the affected manufacturer serial numbers.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0186 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0186 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0186 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0186 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0186. Service information required by EASA AD 2022–0186 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1582 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0	$510	$15,300

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$4	$174

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS Airplanes: Docket No. FAA–2022–1582; Project Identifier MCAI–2022–01232–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, having manufacturer serial numbers identified in Airbus Service Bulletin A350–53–P074, dated July 29, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an in-service inspection that found overhead storage compartment (OHSC) crash rods that were disconnected. The FAA is issuing this AD to address this incorrect installation, which could affect the structural integrity of the OHSC under emergency landing loads. The unsafe condition, if not addressed, could lead to OHSC detachment, resulting in injury to occupants and blocking an escape path during an emergency evacuation.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0186, dated September 13, 2022 (EASA AD 2022–0186).

(h) Exceptions to EASA AD 2022–0186

(1) Where EASA AD 2022–0186 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0186.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0186 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraphs (i) and (k)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A350–53–P074, dated July 29, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2022–0186, dated September 13, 2022.

(3) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* website *airbus.com.*

(4) For EASA AD 2022–0186, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on December 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–26970 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1454; Airspace Docket No. 21–AWP–56]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Boswell Airport, CA

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface at Boswell Airport, CA. The radius is reduced, as there are no circling maneuvers authorized at the airport. This action also proposes the addition of an extension to the north, and a modification to the south extension to adequately contain arriving and departing aircraft. Additionally, this action proposes several administrative changes to update the airport's legal description. These actions will support the safety and management of instrument flight rule (IFR) operations at the airport.

DATES: Comments must be received on or before January 30, 2023.

ADDRESSES: Send comments on this proposal to the U.S. DOT, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify ''FAA Docket No. FAA–2022–1454; Airspace Docket No. 21–AWP–56,'' at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Raphell P. Taylor, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (405) 666–1176.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1454; Airspace Docket No. 21–AWP–56''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface at Boswell Airport, CA. The 6.6-mile radius of the airport is excessive, and should be reduced to 2.4-mile radius, as there are no authorized circling maneuvers at the airport. An extension should be added to the north of the airport to contain departures until reaching 1,200 feet above the surface. The extension to the south of the airport should be modified to better contain departures until reaching 1,200 feet above the surface and arrivals below 1,500 feet above the surface.

Additionally, the FAA proposes administrative modifications to the airport's legal description. The airport's city is incorrect in the existing Class E5 description. It should read: ''Corcoran, CA''. The airport name in the text header is incorrect. It should read: ''Boswell Airport, CA''. The navigational aid used in the existing Class E5 legal description should be removed as it has been decommissioned. The geographic coordinates for the airport should be updated to match the FAA's database.

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 19, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designation listed in this document will be published subsequently in FAA Order JO 7400.11, which is published yearly and becomes effective on September 15.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AWP CA E5 Corcoran, CA [Amended]

Boswell Airport, CA
(Lat. 36°05′19″ N, long. 119°32′30″ W)

That airspace extending upward from 700 feet above the surface within a 2.4-mile radius of the airport, and within 2.1 miles each side of the 148° bearing from the airport extending from the 2.4-mile radius to 6.7 miles southeast of the airport, and within 2.4 miles each side of the 346° bearing from the airport extending from the 2.4-mile radius to 7.6 miles north of the airport.

Issued in Des Moines, Washington, on December 7, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–27078 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1453; Airspace Docket No. 21–AWP–57]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Mefford Field Airport, CA

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Mefford Field Airport, CA. These actions will support instrument flight rules (IFR) arrival and departure operations at the airport.

DATES: Comments must be received on or before January 30, 2023.

ADDRESSES: Send comments on this proposal to the U.S. DOT, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify ''FAA Docket No. FAA–2022–1453; Airspace Docket No. 21–AWP–57,'' at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Raphell P. Taylor, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (405) 666–1176.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1453; Airspace Docket No. 21–AWP–57.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action

on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Mefford Field Airport to contain departing aircraft until reaching 1,200 feet above the surface and arriving aircraft below 1,500 feet above the surface.

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11, which is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, FAA proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AWP CA E5 Tulare, CA [New]

Mefford Field Airport, CA

(Lat. 36°9′24″ N, long. 119°19′36″ W)

That airspace extending upward from 700 feet above the surface within 1.8 miles each side of the 142° bearing from the airport extending to 6.4 miles southeast of the airport, and within 1.8 miles each side of the 322° bearing from the airport extending to 6.4 miles northwest of the airport.

Issued in Des Moines, Washington, on December 7, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–27080 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1558; Airspace Docket No. 22–AGL–11]

RIN 2120–AA66

Proposed Amendment and Establishment of Air Traffic Service (ATS) Routes in the Vicinity of Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–169, V–170, and V–430, and Area Navigation (RNAV) route T–331; and establish RNAV route T–475. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Devils Lake, ND (DVL), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Devils Lake VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before January 30, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–1558; Airspace Docket No. 22–AGL–11 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and

subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1558; Airspace Docket No. 22–AGL–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1558; Airspace Docket No. 22–AGL–11.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the Devils Lake, ND, VOR in August 2023. The Devils Lake VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Devils Lake VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The ATS routes effected by the planned decommissioning of the Devils Lake VOR are VOR Federal airways V–169, V–170, and V–430. With the planned decommissioning of the Devils Lake VOR the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, modifications to V–169 and V–170 would result in the airways being shortened due to the Devils Lake VOR/DME end point being removed and modification to V–430 would result in a gap in the airway due to the Devils Lake VOR being removed. Further, though not directly affected by the planned decommissioning of the Devils Lake VOR, RNAV route T–331 would also be modified resulting in the route being extended, in part, to provide a RNAV replacement route for the segment of V–430 affected by the Devils Lake VOR removal.

To overcome the affected ATS route segments being removed, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways V–15, V–55, and V–510 to circumnavigate the affected area, or receive air traffic control (ATC) radar vectors to fly through the affected area. Additionally, IFR pilots equipped with RNAV capabilities could use T–331, as proposed to be extended, and T–405 or navigate point to point using the existing fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

Further, the FAA proposes to establish RNAV route T–475 between the Bismarck, ND, VOR/DME NAVAID and the GICHI, ND, waypoint (WP) located near the Devils Lake, ND, VOR/DME. The proposed T-route would overlay the existing V–169 and, in part, mitigate the proposed removal of the V–169 segment affected by the planned decommissioning of the Devils Lake VOR. The new T-route would provide airspace users equipped with RNAV capabilities an enroute alternative between the Bismarck, ND, area and the Devils Lake, ND, area. Lastly, the new

T-route would support the FAA's NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–169, V–170, and V–430, and RNAV route T–331; and establish RNAV route T–475 due to the planned decommissioning of the Devils Lake, ND, VOR. The proposed ATS route actions are described below.

V–169: V–169 currently extends between the Tobe, CO, VOR/DME and the Devils Lake, ND, VOR/DME. The FAA proposes to remove the route segment between the Bismarck, ND, VOR/DME and the Devils Lake, ND, VOR/DME. As amended, the airway would be changed to extend between the Tobe, CO, VOR/DME and the Bismarck, ND, VOR/DME.

V–170: V–170 currently extends between the Devils Lake, ND, VOR/DME and the Sioux Falls, SD, VORTAC; between the Rochester, MN, VOR/DME and the Salem, MI, VORTAC; and between the Slate Run, PA, VORTAC and the intersection of the Andrews, MD, VORTAC 060° and Baltimore, MD, VORTAC 165° radials (POLLA Fix). The airspace within R–5802 is excluded when active. The FAA proposes to remove the airway segment between the Devils Lake, ND, VOR/DME and the Jamestown, SD, VOR/DME. As amended, the airway would be changed to extend between the Jamestown VOR/DME and the Sioux Falls VORTAC; between the Rochester VOR/DME and the Salem VORTAC; and between the Slate Run VORTAC and the POLLA Fix. The R–5802 exclusion language would remain unchanged.

V–430: V–430 currently extends between the Cut Bank, MT, VOR/DME and the Escanaba, MI, VOR/DME. The FAA proposes to remove the airway segment between the Minot, ND, VOR/DME and the Grand Forks, ND, VOR/DME. As amended, the airway would be changed to extend between the Cut Bank VOR/DME and the Minot VOR/DME; and between the Grand Forks VOR/DME and the Escanaba VOR/DME.

T–331: T–331 currently extends between the FRAME, CA, Fix and the FONIA, ND, Fix. The FAA proposes to extend the route east from the FONIA Fix to the MECNU, MN, Fix located near the western shore of Lake Superior and the United States/Canada border. The T–331 extension would overlie the current V–430 airway between the FIONA Fix and the Duluth, MN, VORTAC to provide an RNAV route alternative for the V–430 airway segment proposed to be removed as noted above. From the Duluth VORTAC, T–331 would overlie the V–13 airway to the MECNU Fix. The full route description is listed in the amendments to part 71 set forth below.

T–475: T–475 is a proposed new RNAV route that would extend between the Bismarck, ND, VOR/DME and the GICHI, ND, WP located near the Devils Lake, ND, VOR/DME. The new route would overlie the current V–169 airway and serve as a RNAV route alternative for the V–169 airway segment proposed to be removed as noted above. The full route description is listed in the amendments to part 71 set forth below.

The NAVAID radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a), and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–169 [Amended]

From Tobe, CO; 69 MSL, Hugo, CO; 38 miles, 67 MSL, Thurman, CO; Akron, CO; Sidney, NE; Scottsbluff, NE; Toadstool, NE; Rapid City, SD; Dupree, SD; to Bismarck, ND.

* * * * *

V–170 [Amended]

From Jamestown, ND; Aberdeen, SD; to Sioux Falls, SD. From Rochester, MN; Nodine, MN; Dells, WI; INT Dells 097° and Badger, WI, 304° radials; Badger; INT Badger 121° and Pullman, MI, 282° radials; Pullman; to Salem, MI. From Slate Run, PA; Selinsgrove, PA; Ravine, PA; INT Ravine 125° and Modena, PA, 318° radials; Modena; Dupont, DE; INT Dupont 223° and Andrews, MD, 060° radials; to INT Andrews 060° and Baltimore, MD, 165° radials. The airspace within R–5802 is excluded when active.

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V–430 [Amended]

From Cut Bank, MT; 10 miles, 74 miles 55 MSL; Havre, MT, 14 miles, 100 miles 50 MSL; Glasgow, MT; INT Glasgow 100° and Williston, ND, 263° radials, 22 miles, 33 miles 55 MSL, Williston; to Minot, ND. From Grand Forks, ND; Thief River Falls, MN; INT Thief River Falls 122° and Grand Rapids, MN, 292° radials; Grand Rapids; Duluth, MN; Ironwood, MI; Iron Mountain, MN; to Escanaba, MI.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–331 FRAME, CA to MECNU, MN [Amended]

FRAME, CA	FIX	(Lat. 36°36′46.74″ N, long. 119°40′25.53″ W)
NTELL, CA	WP	(Lat. 36°53′58.99″ N, long. 119°53′22.21″ W)
KARNN, CA	FIX	(Lat. 37°09′03.79″ N, long. 121°16′45.22″ W)
VINCO, CA	FIX	(Lat. 37°22′35.11″ N, long. 121°42′59.52″ W)
NORCL, CA	WP	(Lat. 37°31′02.66″ N, long. 121°43′10.60″ W)
MOVDD, CA	WP	(Lat. 37°39′40.88″ N, long. 121°26′53.53″ W)
EVETT, CA	WP	(Lat. 38°00′36.11″ N, long. 121°07′48.14″ W)
TIPRE, CA	WP	(Lat. 38°12′21.00″ N, long. 121°02′09.00″ W)
Squaw Valley, CA (SWR)	VOR/DME	(Lat. 39°10′49.16″ N, long. 120°16′10.60″ W)
TRUCK, CA	FIX	(Lat. 39°26′15.67″ N, long. 120°09′42.48″ W)
Mustang, NV (FMG)	VORTAC	(Lat. 39°31′52.60″ N, long. 119°39′21.87″ W)
Lovelock, NV (LLC)	VORTAC	(Lat. 40°07′30.95″ N, long. 118°34′39.34″ W)
Battle Mountain, NV (BAM)	VORTAC	(Lat. 40°34′08.69″ N, long. 116°55′20.12″ W)
TULIE, ID	WP	(Lat. 42°37′58.49″ N, long. 113°06′44.54″ W)
AMFAL, ID	WP	(Lat. 42°45′56.67″ N, long. 112°50′04.64″ W)
Pocatello, ID (PIH)	VOR/DME	(Lat. 42°52′13.38″ N, long. 112°39′08.05″ W)
VIPUC, ID	FIX	(Lat. 43°21′09.64″ N, long. 112°14′44.08″ W)
Idaho Falls, ID (IDA)	VOR/DME	(Lat. 43°31′08.42″ N, long. 112°03′50.10″ W)
SABAT, ID	FIX	(Lat. 44°00′59.71″ N, long. 111°39′55.04″ W)
Billings, MT (BIL)	VORTAC	(Lat. 45°48′30.81″ N, long. 108°37′28.73″ W)
EXADE, MT	FIX	(Lat. 47°35′56.78″ N, long. 104°32′40.61″ W)
JEKOK, ND	WP	(Lat. 47°59′31.05″ N, long. 103°27′17.51″ W)
FONIA, ND	FIX	(Lat. 48°15′35.07″ N, long. 103°10′37.54″ W)
Minot, ND (MOT)	VOR/DME	(Lat. 48°15′37.21″ N, long. 101°17′13.46″ W)
GICHI, ND	WP	(Lat. 48°06′54.20″ N, long. 098°54′45.14″ W)
Grand Forks, ND (GFK)	VOR/DME	(Lat. 47°57′17.40″ N, long. 097°11′07.33″ W)
Thief River Falls, MN (TVF)	VOR/DME	(Lat. 48°04′09.53″ N, long. 096°11′11.31″ W)
BLUOX, MN	FIX	(Lat. 47°34′33.13″ N, long. 095°01′29.11″ W)
Duluth, MN (DLH)	VORTAC	(Lat. 46°48′07.79″ N, long. 092°12′10.33″ W)
MECNU, MN	FIX	(Lat. 47°58′26.68″ N, long. 089°59′33.66″ W)

* * * * * * *

T–475 Bismarck, ND (BIS) to GICHI, ND [New]

Bismarck, ND (BIS)	VOR/DME	(Lat. 46°45′42.34″ N, long. 100°39′55.47″ W)
GICHI, ND	WP	(Lat. 48°06′54.20″ N, long. 098°54′45.14″ W)

* * * * *

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

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–27086 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2021–0847; FRL–9972–03–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (22–1.5e); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: EPA is issuing a correction to a proposed rule that published in the **Federal Register** of Friday, December 2, 2022, in which EPA proposed significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs) and are also subject to Orders issued by EPA pursuant to TSCA. This document corrects an inadvertent error in the Chemical Abstracts Service (CAS) Registry number identified for Phosphonium, tributyl (2-methoxypropyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-N-methyl-1-butanesulfonamide (1:1) (PMN Number P–03–77).

DATES: Comments on the proposed rule must be received on or before January 3, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0847, through the Federal eRulemaking Portal at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *Wysong.william@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is correcting an inadvertent error in the Chemical Abstracts Service (CAS) Registry number identified for Phosphonium, tributyl (2-methoxypropyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-N-methyl-1-butanesulfonamide (1:1) (PMN Number P–03–77) in the proposed rule that published in the **Federal Register** of Friday, December 2, 2022 (87 FR 74072; FRL–9972–01–OCSPP), in which EPA proposed significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs) and are also subject to Orders issued by EPA pursuant to TSCA. EPA proposed to codify this SNUR as 40 CFR 721.11727.

Correction

In FR Doc. 2022–26252 appearing on page 74072 in the **Federal Register** of Friday, December 2, 2022, the following corrections are made:

1. On page 74079, in the first column, the phrase ‘‘*CAS or Accession Number:* CAS No. 332350–93–3.’’ is corrected to read ‘‘*CAS or Accession Number:* CAS No. 332350–90–0.’’

2. On page 74088, in the first column, the proposed regulatory text for 40 CFR 721.11727(a)(1) is corrected to read as follows:

‘‘(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Phosphonium, tributyl (2-

methoxypropyl)-, salt with 1,1,2,2,3,3,4,4,4-nonafluoro-N-methyl-1-butanesulfonamide (1:1) (PMN P–03–77; CAS No. 332350–90–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.''

Dated: December 9, 2022.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAR Case 2021–012; Docket No. FAR–2021–0012; Sequence No. 1]

RIN 9000–AO29

Federal Acquisition Regulation: 8(a) Program

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) to update and clarify requirements associated with the 8(a) program.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the addresses shown below on or before February 13, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2021–012 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2021–012''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2021–012''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2021–012'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2021–012'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or by email at *dana.bowman@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2021–012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement regulatory changes made by the Small Business Administration (SBA), in its final rule published in the **Federal Register** at 85 FR 66146 on October 16, 2020. SBA initiated a review of its regulations in response to the prior administration's government-wide regulatory reform initiative. As a result, SBA revised the 8(a) program regulations to more clearly articulate SBA's intent with regard to certain aspects of the 8(a) program to eliminate confusion and decrease burdens on procuring activities and 8(a) participants.

II. Discussion and Analysis

This rule proposes to modify subparts 19.6 and 19.8 as follows:

—Modify FAR 19.601(c) to clarify that the certificate of competency program is not applicable to 8(a) sole-source awards (see 13 CFR 125.5(a)(1)).

—Modify the heading at 19.804–5 to add blanket purchase agreements (BPAs) and add text to require that BPAs issued under part 13, including orders placed under part 13 BPAs, must be offered to, and accepted by SBA (see 13 CFR 124.503(h)).

—Modify FAR 19.805–2 to clarify 8(a) participants' eligibility criteria for two-step design-build competitive procurements (see 13 CFR 124.507(d)(3)); and FAR 19.808–1 to clarify eligibility criteria for 8(a) sole-source awards (see 13 CFR 124.501(g)).

—Revise 19.808–2 to add ''follow-on 8(a) acquisitions''.

—New text is proposed at section 19.810(a) to specify that SBA may appeal a contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements set forth in 13 CFR 124.504(d) (see 13 CFR 124.505(a)).

—Modify the heading at 19.815 to add notification requirements.

—Add new text at 19.815(d) and 19.815(e) to address notification requirements when a contracting officer decides that a requirement, previously procured under the 8(a) program, is a new requirement and not a follow-on requirement to an 8(a) contract; and when the procuring activity intends to procure a follow-on requirement using an existing limited competition contracting vehicle that is not available to all 8(a) participants and the current or previous 8(a) contract was available to all 8(a) participants.

—Add new text at 19.815(f) to address notification requirements when a mandatory source will be used for a follow-on requirement to an 8(a) contract (see 13 CFR 124.504(d)(4)(ii)).

—Modify 19.816(c) to add a reference to SBA's eligibility criteria.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items or for Commercial Services

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Expected Impact of the Rule

This proposed rule implements SBA's final rule issued on October 16, 2020 (85 FR 66146) to update and clarify requirements associated with the 8(a) program. The changes are intended to clarify 8(a) program requirements and eliminate confusion among 8(a) concerns and procuring activities. The proposed rule will require contracting officers to submit BPAs issued under FAR part 13 and FAR part 13 BPA orders in the 8(a) Program to SBA for acceptance. Contracting officers will also be required to notify SBA of follow-on, non-8(a) procurements, and should notify SBA when a mandatory source

will be utilized for a follow-on to an 8(a) contract. This proposed rule also clarifies eligibility requirements under the 8(a) program, which will assist both the Government and 8(a) concerns. The proposed rule also clarifies that the SBA certificate of competency program does not apply to 8(a) sole-source awards; therefore, contracting officers will no longer be required to submit these actions to SBA. Given that this proposed rule clarifies 8(a) program requirements and reduces ambiguities for small business entities and procuring activities, any impact is expected to be beneficial to both Government and contractors and offerors. Any cost to the Government is not expected to be significant.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this proposed rule clarifies 8(a) program requirements and is expected to assist both small entities and the Government in implementing the 8(a) program. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to update and clarify requirements associated with the 8(a) program to align it with the regulatory changes made by the Small Business Administration (SBA) in its final rule dated October 16, 2020 (85 FR 66146).

The objective of this rule is to implement SBA regulatory changes made to the 8(a) program. SBA initiated a review of its regulations in response to the prior administration's government-wide regulatory reform initiative. As a result, SBA revised its 8(a) program regulations to eliminate confusion among small businesses and procuring activities. The proposed rule clarifies that the certificate of competency program is not applicable to 8(a) sole-source awards. Additionally, the proposed rule adds a requirement for the contracting officer to submit an offering letter to SBA for, and for SBA to accept, blanket purchase agreements (BPAs) under FAR part 13 and orders placed under part 13 BPAs. The rule also clarifies an 8(a) concern's eligibility for two-step design-build acquisitions and sole-source awards made under the 8(a) program. The rule also requires the procuring activity to submit a notification to SBA when a contracting officer determines that a procurement, previously procured under the 8(a) program, is a new requirement that is not subject to SBA release requirements. A notification is also required when the procuring activity intends to procure a follow-on to an 8(a) procurement using an existing limited competition contract vehicle, not available to all 8(a) program participants, when the current or previous 8(a) contract was not a limited competition contracting vehicle. The legal basis for this rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

This proposed rule will impact small businesses who are 8(a) program participants and the Government by clarifying the 8(a) program regulations and ensuring follow-on requirements to 8(a) procurements remain in the 8(a) program when appropriate. Based on data in the System for Award Management, the estimated number of 8(a) small businesses is 5,659 and the estimated number of 8(a) joint ventures is 521. Therefore, the estimated number of total small entities to which the rule applies is 6,180. According to the Federal Procurement Data System, 8,037 8(a) sole-source awards and 1,224 8(a) set-aside awards were made in fiscal year (FY) 2019; 7,473 8(a) sole-source awards and 1,088 8(a) set-aside awards were made in FY 2020; and 6,369 8(a) sole-source awards and 1,251 8(a) set-aside awards were made in FY 2021. This averages out to 7,293 8(a) sole-source awards and 1,187 set-aside awards made in the last three fiscal years.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2021–012), in correspondence.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Part 19

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

19.601 [Amended]

■ 2. Amend section 19.601 by—

■ a. Removing from paragraph (b) the phrase ''Small Business Administration (SBA)'' and adding in its place ''SBA''; and

■ b. Removing from the first sentence of paragraph (c) the phrase ''Government acquisitions.'' and adding in its place ''Government acquisitions except for 8(a) sole-source awards.'' and removing from the second sentence of paragraph (c) the word ''also''.

■ 3. Revise section 19.804–5 to read as follows:

19.804–5 Basic ordering agreements and blanket purchase agreements.

(a) The contracting office shall submit an offering letter for, and SBA must accept, each order under a basic ordering agreement (BOA) or a blanket purchase agreement (BPA) issued under part 13 (see 13.303), in addition to the

agency offering and SBA accepting the BOA or BPA itself.

(b) SBA will not accept for award on a sole-source basis any order that would cause the total dollar amount of orders issued under a specific BOA or BPA to exceed the competitive threshold amount in 19.805–1.

(c) Once an 8(a) participant's program term expires, the participant otherwise exits the 8(a) program, or becomes other than small for the NAICS code assigned under the BOA or the BPA, SBA will not accept new orders under the BOA or BPA for the participant.

■ 4. Amend section 19.805–2 by—
■ a. Revising the second sentence in paragraph (b) introductory text;
■ b. Redesignating paragraph (b)(2) as paragraph (b)(3); and
■ c. Adding a new paragraph (b)(2).

The revision and addition reads as follows:

19.805–2 Procedures.

* * * * *

(b) * * * Eligibility is based on section 8(a) program criteria (see 13 CFR 124.501(g) and 19.816(c)).

* * * * *

(2) For a two-step design-build procurement, an 8(a) participant must be eligible for award under the 8(a) program on the initial date for receipt of phase one offers specified in the solicitation (see 13 CFR 124.507(d)(3)).

* * * * *

■ 5. Amend section 19.808–1 by—
■ a. Redesignating paragraph (e) as paragraph (f);
■ b. Adding a new paragraph (e);
■ c. Removing from the newly redesignated paragraph (f) the phrase ''sole source award'' and adding in its place ''sole-source award''.

The addition reads as follows:

19.808–1 Sole source.

* * * * *

(e) A concern must be a current participant in the 8(a) program at the time of an 8(a) sole-source award.

* * * * *

19.808–2 [Amended]

■ 6. Amend section 19.808–2 by—
■ a. Removing from the first sentence the phrase ''8(a) acquisitions'' and adding in its place ''8(a) acquisitions, including follow-on 8(a) acquisitions,''; and
■ b. Removing from the second sentence the phrase ''negotiations among'' and adding in its place ''negotiations among eligible''.
■ 7. Amend section 19.810 by adding paragraph (a)(4) to read as follows:

19.810 SBA appeals.

(a) * * *

(4) A contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements at 13 CFR 124.504(d)(1) (see 19.815(a) and (d)(1)).

* * * * *

■ 8. Revise section 19.815 to read as follows:

19.815 Release and notification requirements for non-8(a) procurement.

(a) Once a requirement has been accepted by SBA into the 8(a) program, any follow-on requirements (see definition at 13 CFR 124.3) shall remain in the 8(a) program unless—

(1) SBA agrees to release the requirement from the 8(a) program for a follow-on, non-8(a) procurement in accordance with 13 CFR 124.504(d) (see paragraph (b) of this section); or

(2) There is a mandatory source (see 8.002 or 8.003; also see paragraph (f) of this section).

(b) To obtain release of a follow-on, non-8(a) procurement, (other than a mandatory source listed at 8.002 or 8.003), the contracting officer shall make a written request to, and receive concurrence from, the SBA Associate Administrator for Business Development.

(c)(1) The written request to the SBA Associate Administrator for Business Development shall indicate—

(i) Whether the agency has achieved its small disadvantaged business goal;

(ii) Whether the agency has achieved its HUBZone, SDVOSB, WOSB, or small business goal(s); and

(iii) Whether the requirement is critical to the business development of the 8(a) contractor that is currently performing the requirement.

(2) Generally, a requirement that was previously accepted into the 8(a) program will only be released for procurements outside the 8(a) program when the contracting activity agency agrees to set aside the requirement under the small business, HUBZone, SDVOSB, or WOSB programs.

(3) The requirement that a follow-on procurement must be released from the 8(a) program in order for it to be fulfilled outside the 8(a) program does not apply to task or delivery orders offered to and accepted into the 8(a) program, where the basic contract was not accepted into the 8(a) program.

(d)(1) When a contracting officer decides that a requirement previously procured under the 8(a) program is a new requirement and not a follow-on requirement to an 8(a) contract(s), the contracting officer shall submit a written notice to the SBA Associate Administrator for Business Development that the agency intends to procure the requirement outside the 8(a) program (see 19.810(a)(4)).

(2) The written notice shall include a copy of the acquisition plan, if available; performance work statement (PWS); statement of work (SOW) or statement of objectives (SOO); and the values of the existing 8(a) contract(s) and the new contract requirement.

(e)(1) When a contracting officer decides to procure a follow-on requirement to an 8(a) contract using an existing, limited competition contracting vehicle that is not available to all 8(a) participants and the current or previous 8(a) contract was available to all 8(a) participants, the contracting officer must submit a written notice to the SBA Associate Administrator for Business Development.

(2) The written notice shall include a copy of the acquisition plan, if available; PWS; SOW or SOO; and the values of both contracts.

(f)(1) When a mandatory source will be used for a follow-on requirement to an 8(a) contract, the contracting officer should notify the SBA Associate Administrator for Business Development at least 30 days prior to the end of the contract or order in accordance with 13 CFR 124.504(d)(4)(ii).

(2) The written notice should include a copy of the acquisition plan, if available; PWS; SOW or SOO; and the values of both contracts.

19.816 [Amended]

■ 9. Amend section 19.816 by removing from paragraph (c) the word ''criteria'' and adding in its place ''criteria (see 13 CFR 124.507(d))''.

[FR Doc. 2022–26978 Filed 12–14–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221209–0266]

RIN 0648–BL65

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and Framework Adjustment 6 to the Bluefish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Framework Adjustment 6 to the Bluefish Fishery Management Plan. This framework was developed by the Mid-Atlantic Fishery Management Council in conjunction with the Atlantic States Marine Fisheries Commission to revise the process for setting recreational management measures, and recreational accountability measures, for summer flounder, scup, black sea bass, and bluefish.

DATES: Comments must be received by January 17, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0096, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0096 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Framework Adjustment 6 to the Bluefish Fishery Management Plan, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: *https://www.mafmc.org/actions/hcr-framework-addenda.*

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116, or *emily.keiley@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, black sea bass, and bluefish fisheries. The Council submitted Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and Framework Adjustment 6 to the Bluefish FMP (the Recreational Harvest Control Rule (HCR) Framework) to us for consideration of approval. The Recreational HCR Framework proposes adoption of a new process for setting recreational measures (bag, size, and season limits) and modifications to the recreational accountability measures. The goal of this Framework/Addenda is to establish a process for setting recreational measures that: Prevent overfishing; are reflective of stock status; appropriately account for uncertainty in the recreational data; take into consideration angler preferences; and provide an appropriate level of stability and predictability in changes from year to year.

Proposed Recreational Management Measure Setting Process: The Percent Change Approach

This action proposes to modify the process for setting recreational management measures for summer flounder, scup, black sea bass, and bluefish, including how to determine when management measures need to be changed, the percent change required, and the timing of the overall process. This process will apply when stocks are not in a rebuilding plan; when a stock is in a rebuilding plan, recreational measures will be determined based on the requirements of that plan. Bluefish is in a rebuilding plan, so this approach is not currently applicable. The proposed process, referred to as the Percent Change Approach, would use two factors to determine if management measures could remain status quo, could be liberalized, or must be restricted. These factors are:

1. Comparison of a confidence interval (CI) around an estimate of expected harvest under status quo measures to the average recreational harvest limit (RHL) for the upcoming two years and;
2. Biomass compared to the target level, as defined by the most recent stock assessment.

Step 1: Estimating Recreational Harvest

The amount of expected recreational harvest is difficult to predict as it is impacted by many factors besides the management measures, including fishing effort, availability of various target species, economic factors, and weather. Harvest can vary notably from year to year even under the same set of management measures. Given these challenges, the Council and Commission are supporting the development of improved statistical analysis tools for predicting the impacts of measures on catch and harvest, while accounting for other factors such as angler preferences.

These statistical models may not be available for all species given the amount of data and development that is required to support them. When such models are not available, estimated recreational harvest would be based on the two most recent years of MRIP estimates.

In addition to estimating harvest, the CI around this recreational harvest estimate would also be generated. When developing a CI from two years of MRIP data, the Plan Development Team/Fishery Management Action Team recommended the use of a joint distribution 80-percent confidence interval that takes into consideration the percent standard error (PSE) of each individual year's MRIP estimate and the variability of the estimates between years.

Step 2: Biomass Comparison

The most recent stock assessment will be used to determine the biomass relative to the biomass target (BMSY or the relevant proxy). If the biomass is at least 150 percent of the target, the stock is considered ''very high''; if the stock is between 100 and 150 percent of the target, it will be considered ''high''; stocks with a biomass below the target size will be categorized as ''low.''

Step 3: Determining the Percent Change

Considered together, the harvest and biomass comparisons determine the appropriate degree of change, defined as a percentage change in expected harvest, as summarized in Table 1. For example, when the future 2-year average RHL is greater than the upper bound of the harvest estimate CI (*i.e.,* an RHL underage is expected under status quo measures) and biomass is below the target level, measures would be

modified to achieve a 10-percent liberalization in harvest. In this scenario, the liberalization is capped at 10 percent even if the difference between the RHL and expected harvest is greater than 10 percent.

TABLE 1—MANAGEMENT RESPONSE TABLE

Factors to determine recommended change		Recommended change in harvest
(1) Future RHL vs harvest estimate	(2) Stock biomass compared to the target stock size (B/BMSY)	
Future 2-year average RHL is *greater than* the upper bound of the harvest estimate confidence interval (harvest is expected to be lower than the RHL).	*Very high* (at least 150% of the target stock size).	*Liberalization:* percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 40 percent.
	High (between the target and 150% of the target stock size).	*Liberalization:* percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 20 percent.
	Low (below the target stock size)	*Liberalization:* 10 percent.
Future 2-year average RHL is *within* the confidence interval of the harvest estimate (harvest is expected to be close to the RHL).	*Very high* (at least 150% of the target stock size).	*Liberalization:* 10 percent.
	High (between the target and 150% of the target stock size).	*No change:* 0 percent.
	Low (below the target stock size)	*Reduction:* 10 percent.
Future 2-year average RHL is *less than* the lower bound of the harvest estimate confidence interval (harvest is expected to exceed the RHL).	*Very high* (at least 150% of the target stock size).	*Reduction:* 10 percent.
	High (between the target and 150% of the target stock size).	*Reduction:* percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 20 percent.
	Low (below the target stock size)	*Reduction:* percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 40 percent.

Key Terms

• *Biomass (B):* The size of a stock of fish measured in weight. For summer flounder, scup, black sea bass, and bluefish, the biomass levels and biomass targets used in management are based on spawning stock biomass.

• *Biomass target (BMSY):* The stock size (B) associated with maximum sustainable yield (MSY), as defined by a stock assessment. MSY is the largest average catch that can be taken from a stock at BMSY over time under existing environmental conditions without negatively impacting the reproductive capacity of the stock.

• *Confidence Interval:* the upper and lower bound around a point estimate to indicate the range of possible values given the uncertainties around the estimate.

• *Recreational Harvest Limit (RHL):* The total allowable annual recreational fishery harvest; set based on information from the stock assessment, considerations about scientific and management uncertainty, allocations between the commercial and recreational sectors, and assumptions about dead discards.

Timing

The current process considers adjustments to recreational management measures annually. This has a number of associated challenges, given the timing of MRIP data availability and the fishing seasons. The Percent Change Approach would shift the timing to a 2-year cycle, adjusting measures in sync with the setting of catch and landings limits in response to updated stock assessment information. Updated stock assessments will be available every other year for all four species. In the interim year, measures would be reviewed and may be modified if new data suggest a major change in the expected impacts of those measures on the stock or the fishery.

Sunset Provision

The proposed Percent Change Approach to setting recreational management measures is an improvement over the status quo process because it allows for measures to be set for two years, includes the explicit consideration of biomass, and requires the consideration of variability in harvest estimates. However, the Council and Commission's Policy Board agreed that the Percent Change Approach should sunset no later than December 31, 2025, with the goal of implementing additional changes to recreational fisheries management during fishing year 2026. These changes will be developed through a separate future management action. In the absence of additional action to revise the recreational management measure-setting process by the sunset date, the process for establishing recreational measures will revert to the methodology currently used by the Council, which is part of the FMP but not part of regulatory text.

Conservation Equivalency

The Council and Policy Board considered, but did not recommend, an option to set constraints around the use of the Commission's conservation equivalency policy as applied to the recreational fisheries for these four species. They decided to maintain the current policy to allow individual states the flexibility to tailor management measures to meet the needs of their fisheries.

This alternative would maintain the ability for individual states to submit proposals for alternative recreational management measures for summer flounder and black sea bass that are expected to achieve an equivalent level of recreational harvest, catch, or fishing mortality (depending on the alternative selected from Alternative Sets 1 and 2) as the measures that would otherwise be implemented. This state-level flexibility can allow measures to be tailored to the unique characteristics of the fisheries in each state. For example, some states have used the conservation equivalency process to maintain a Saturday opening

date. The Council and Policy Board supported this level of flexibility and, therefore, selected this as a preferred alternative.

Recreational Accountability Measures

This framework also considers changes to the recreational accountability measures that consider if the recreational ACL overages contributed to overfishing. Specifically, when biomass is between the target and threshold levels, the requirement of paying back recreational catch limit overages will account for whether those overages contributed to overfishing based on the most recent stock assessment information. When a reactive AM has been triggered by a recreational ACL overage and the most recent biomass estimate is between the target and the threshold, consideration would also be given to the most recent estimate of fishing mortality relative to F_{MSY} in the year(s) when the overage(s) occurred. The AM response would be stricter if F_{MSY} was exceeded in addition to the ACL (*e.g.,* a payback would be required). If only the recreational ACL was exceeded, the AM response would be less strict (*e.g.,* measures would be revised but a payback would not be required).

Estimates of fishing mortality during the years relevant to the evaluation may not always be available as these estimates are provided through the stock assessment, which are not updated every year. When the relevant fishing mortality estimates are not available, this comparison would default to a comparison of total catch relative to the ABC.

This was selected as a preferred alternative because it considers if the recreational ACL overages contributed to overfishing, and unlike the Percent Change Approach, these recreational accountability measures will not sunset in 2025.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass, and Bluefish FMPs, other provisions of the Magnuson Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures.

Affiliates potentially regulated by this action include any affiliates with Federal for-hire permits for summer flounder, scup, black sea bass, and/or bluefish in any year between 2019–2021. A total of 688 affiliates were identified as being potentially regulated by this action, all of which were identified as small businesses based on their average revenues in 2019–2021. Of these 688 affiliates, a total of 363 affiliates (53 percent) reported that the majority of their revenues in 2021 came from for-hire fishing for any species. Some of these affiliates may have also participated in commercial fishing. The SBA defines a small for-hire recreational fishing business as a firm with receipts of up to $11 million. Estimating what proportion of the overall revenues of these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder, scup, black sea bass, and bluefish as recreational species in the Mid-Atlantic and New England, revenues generated from these species are likely very important for many of these firms at certain times of the year. The 3-year average (2018–2020) combined gross receipts (all for-hire fishing activity combined) for these small entities was $49,916,903, ranging from less than $10,000 for 105 entities (lowest value $46) to over $1,000,000 for 8 entities (highest value $3.6 million).

The proposed action would adjust the process for setting recreational management measures, and is administrative in nature. Because the proposed action is only changing the process used to set recreational measures, and is not making changes to the recreational management measures (possession limits, seasons, and size limits) it will not change the regulations effecting the operation of recreational fisheries directly. Future actions, which implement new management measures, based on this proposed process, would perform economic analyses of the impacts as appropriate. Future impacts on the entities described will depend on the harvest limits and management measures that are set. For-hire revenues are also impacted by a variety of other factors, including demand for for-hire trips for summer flounder, scup, black sea bass, bluefish, and other potential target species; fuel prices; weather; the economy; and other factors. Because this action is not making changes to the recreational management measures and is administrative in nature, we have determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 9, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.100, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes in measures are needed.

* * * * *

■ 3. In § 648.101, revise paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) The Monitoring Committee shall identify and review the relevant sources

of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

■ 4. In § 648.102, revise paragraphs (a) introductory text, (a)(6), (a)(11), (b), and (d) to read as follows:

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, a recreational harvest limit, and a commercial quota, along with other measures, as needed to prevent overages of the applicable specified limits or targets for each sector, as prescribed in the FMP. The measures to be considered by the Monitoring Committee are:

* * * * *

(6) Recreational possession limit set from a range of 0 to 15 summer flounder.

* * * * *

(11) Modification of existing accountability measures and ACT control rules utilized by the Monitoring Committee.

(b) *Specification fishing measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to constrain the sectors to the applicable limit or target as prescribed in the FMP. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC.

* * * * *

(d) *Recreational specification measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to prevent overages of the applicable recreational target, as prescribed in the FMP, for an upcoming fishing year or years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual, or multi-year, coastwide management measures projected to achieve the applicable recreational target as prescribed in the FMP, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.,* multi-state conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as possible to implement the overall recreational target for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures that should be applied to a state or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting summer flounder in or from the EEZ when landing in a state that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the **Federal Register** to notify the public.

* * * * *

■ 5. In § 648.103, revise paragraphs (c), (d)(1), and (d)(2)(ii) to read as follows:

§ 648.103 Summer flounder accountability measures.

* * * * *

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) * * *

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the BMSY threshold (*i.e.,* B/BMSY is less than 0.5),), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent three-year average recreational catch estimate exceeded the most recent three-year average recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter,

once catch data are available, from the recreational ACT. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(2) * * *

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality is not available for the most recent complete year of catch data, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent three-year average recreational catch and the most recent three-year recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.,* $B_{MSY} - B$) divided by one-half of B_{MSY}.

* * * * *

■ 6. In § 648.120, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.120 Scup Annual Catch Limit (ACL).

(a) *Annual Catch Limits.* The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

* * * * *

■ 7. In § 648.121, revise paragraphs (a) introductory text and (a)(1) and (b) to read as follows:

§ 648.121 Scup Annual Catch Target (ACT).

(a) *Annual Catch Targets.* The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

■ 8. In § 648.122, revise paragraphs (a) introductory text, (a)(7), (a)(14) and (b) to read as follows:

§ 648.122 Scup Specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Monitoring Committee shall recommend to the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, a recreational harvest limit, and a commercial quota, along with other measures, as needed, to prevent overages of the applicable specified limits or targets for each sector, as prescribed in the FMP. The measures to be considered by the Monitoring Committee are as follows:

* * * * *

(7) Recreational possession limit set from a range of 0 to 50 scup.

* * * * *

(14) Modification of existing AM measures and ACT control rules utilized by the Monitoring Committee.

(b) *Specification of fishing measures.* The MAFMC shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment, the MAFMC shall recommend to the Regional Administrator measures necessary to prevent overages of the appropriate specified limits or targets for each sector, as prescribed in the FMP. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries.

* * * * *

■ 9. In § 648.123, revise paragraphs (c) introductory text, (d) introductory text, (d)(1), (d)(2)(ii) introductory text, and (d)(2)(ii)(A) to read as follows:

§ 648.123 Scup accountability measures.

* * * * *

(c) *Recreational ACL.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the BMSY threshold (*i.e.,* B/BMSY is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent three-year average recreational catch estimate exceeded the most recent three-year average recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over two years if doing so

allows for use of identical recreational management measures across the upcoming two years.

* * * * *

(2) * * *

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent three-year average recreational catch and the most recent three-year average recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

* * * * *

■ 10. In § 648.140, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) *Annual Catch Limits.* The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

* * * * *

■ 11. In § 648.141, revise paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

§ 648.141 Black sea bass Annual Catch Target (ACT).

(a) *Annual Catch Targets.* The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1)-(3).

■ 12. In § 648.142, revise paragraphs (a) introductory text, (a)(7), (a)(10), (b), (d) introductory text, (d)(1) and (d)(2)(i) through (iv) to read as follows:

§ 648.142 Black sea bass specifications.

(a) *Specifications.* Commercial quota, recreational landing limit, research set-aside, and other specification measures. The Monitoring Committee will recommend to the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The following measures are to be considered by the Monitoring Committee:

* * * * *

(7) A recreational possession limit.

* * * * *

(10) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons.

* * * * *

(b) *Specification fishing measures.* The MAFMC shall review the Monitoring Committee recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator on measures projected to constrain the sectors to the applicable limit or target as prescribed in the FMP. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery.

* * * * *

(d) *Recreational specification measures.* The Monitoring Committee shall recommend to the MAFMC and ASMFC measures that are projected to prevent overages of the applicable recreational target as prescribed in the FMP. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend recreational management measures to the Regional Administrator. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational black sea bass fishery to the recreational target as specified in the fishery management plan, or

(2) * * *

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as possible to implement the overall recreational target required for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary recreational target. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary

default measures that should be applied to a state or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting black sea bass in or from the EEZ when landing in a state that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the **Federal Register** to notify the public.

* * * * *

■ 13. In § 648.143, revise paragraphs (c) and (d) to read as follows:

§ 648.143 Black sea bass accountability measures.

* * * * *

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown. If the most recent estimate of biomass is below the BMSY threshold (*i.e.,* B/BMSY is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent three-year average recreational catch estimate exceeded the most recent three-year average recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy) then an adjustment to the recreational ACT will be made as soon as possible once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent three-year average recreational catch and the most recent three-year average recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.,* $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above B_{MSY}.* If the most recent estimate of biomass is above B_{MSY} (*i.e.,* B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

* * * * *

■ 13. In § 648.160, revise paragraph (b) to read as follows:

§ 648.160 Bluefish Annual Catch Limit (ACL).

* * * * *

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.,* more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 14. In § 648.162, revise paragraphs (a) introductory text and (c) to read as follows:

§ 648.162 Bluefish specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

* * * * *

(c) *Annual fishing measures.* The MAFMC shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the MAFMC shall recommend to the Regional Administrator by September 1 measures necessary to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a

proposed rule in the **Federal Register** as soon as practicable to implement ACLs, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

* * * * *

■ 15. In § 648.163 revise paragraphs (a), (d) and (f) to read as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACLs will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACLs have been exceeded.

* * * * *

(d) *Recreational landings AM when the recreational ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the recreational ACL is exceeded and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.,* B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the recreational ACL has been exceeded.* If the recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy) then an adjustment to the recreational ACT will be made as soon as possible once catch data are available. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational ACL overage and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over two years if doing so allows for use of identical recreational management measures across the upcoming two years.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (*i.e.,* $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) If biomass is above BMSY. If the most recent estimate of biomass is above BMSY (*i.e.,* B/BMSY is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

* * * * *

(f) Non-landing AMs. In the event that the fishery-level ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the fishery-level ACL was exceeded shall be deducted, as soon as possible, from subsequent, single fishing year ACTs. The payback will be applied to each sector's ACT in proportion to each sector's contribution to the overage.

* * * * *

[FR Doc. 2022–27118 Filed 12–14–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 240

Thursday, December 15, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Delaware Advisory Committee to the Commission will hold virtual meetings on the first Wednesday of each month beginning at 1 p.m. and ending at approximately 2 p.m. ET (may end sooner than 2 p.m. if business concludes) as follows: January 4, February 1, March 1, and April 4, 2023. The purpose of the meetings is to discuss, perfect and vote on the report—COVID–19-related health disparities and the social determinants affecting people of color in Delaware—the Committee will submit to the agency's Staff Director for publication.

DATES: 1/4/23, 2/1/23, 3/1/23 and 4/5/23; 1 p.m. ET

The access information for all meetings is as follows:

- *To join by Zoom web conference: https://tinyurl.com/2sstbf6v* (audio/visual)
- *To join by phone only, dial 1–551–285–1373 (toll-free); Access code:* 160 832 3278#

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or Evelyn Bohor by phone at (202) 381–8915.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the above Zoom link or phone number. If joining via phone-only, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for each meeting.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Ivy Davis at: *ero@usccr.gov*—insert DE statement in the subject line of the transmitting email. Persons who desire additional information may contact Evelyn Bohor at (202) 381–8915.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact agency staff people, as noted in the preceding paragraph, by email or phone.

Agenda

Wednesdays at 1 p.m. (ET): 1/4, 2/1, 3/1 and 4/5/23

I. Welcome and Roll Call
II. Project Planning and Report Discussion
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: December 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–27210 Filed 12–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i Advisory Committee to the Commission will convene by ZoomGov on Thursday, January 19, 2023, from 2:30 p.m. to 4 p.m. HST, to discuss and potentially vote on a project topic.

DATES: Thursday, January 19, 2023, from 2:30 p.m.–4 p.m. HST

Zoom Link: https://tinyurl.com/yesvm96v

Audio: (833) 568–8864; Meeting ID: 160 790 1413

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for this meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov*.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl0AAA*.

Please click on "Committee Meetings" tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above phone number or email address.

Agenda

I. Welcome and Roll Call
II. Approval of November 7, 2022, Meeting Minutes
III. Discussion: Draft Project Proposal
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: December 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–27209 Filed 12–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the American Samoa Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting date.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the American Samoa Advisory Committee. The meeting scheduled for Wednesday, December 15, 2022, at 12 p.m. (SST) is cancelled. The notice is in the **Federal Register** of Friday, July 8, 2022, in FR Doc. 2022–14527, in the first and second column of page 40783.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, (202) 701–1376, *bpeery@usccr.gov.*

Dated: December 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–27205 Filed 12–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Final Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of finished carbon steel flanges (flanges) from India during the period of review (POR), January 1, 2020, through December 31, 2020.

DATES: Applicable December 15, 2022.

FOR FURTHER INFORMATION CONTACT: James Hepburn or Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1882 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2022, Commerce published the preliminary results of this administrative review in the **Federal Register**.[1] Although we invited interested parties to comment on the *Preliminary Results,*[2] we received no comments. Accordingly, no decision memorandum accompanies this **Federal Register** notice, and no changes have been made in the final results of this review. The *Preliminary Results* and the PDM have been adopted as the final results.

Scope of the Order

The merchandise covered by the scope is flanges. For a complete description of the scope, *see* Appendix I.

Final Results of Administrative Review

For the period January 1, 2020, through December 31, 2020, we determine that the following net subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Norma (India) Ltd.[3]	4.21
R.N. Gupta & Co. Ltd	3.61
Companies Not Selected for Individual Examination[4]	3.88

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b)(2), upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Order

The scope of this order covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange

[1] *See Finished Carbon Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review; 2020,* 87 FR 54963 (September 8, 2022) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *Id.* at 54964.

[3] In this administrative review, Commerce found the following companies to be cross-owned with Norma (India) Ltd.: USK Export Private Limited; Uma Shanker Khandelwal and Co.; and Bansidhar Chiranjilal. *See Preliminary Results* PDM at 6; this finding is unchanged in these final results. This rate applies to all cross-owned companies.

[4] *See* Appendix II.

forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this order. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this order.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, etc.), type of face (*e.g.,* flat face, full face, raised face, etc.), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, etc.), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which:

(a) Iron predominates, by weight, over each of the other contained elements:

(b) The carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

Companies Not Selected for Individual Examination

1. Adinath International
2. Allena Group
3. Alloyed Steel
4. Balkrishna Steel Forge Pvt. Ltd.
5. Bebitz Flanges Works Private Limited
6. C. D. Industries
7. Cetus Engineering Private Limited
8. CHW Forge
9. CHW Forge Pvt. Ltd.
10. Citizen Metal Depot
11. Corum Flange
12. DN Forge Industries
13. Echjay Forgings Limited
14. Falcon Valves and Flanges Private Limited
15. Heubach International
16. Hindon Forge Pvt. Ltd.
17. Jai Auto Pvt. Ltd.
18. Kinnari Steel Corporation
19. Mascot Metal Manufacturers
20. M F Rings and Bearing Races Ltd.
21. Munish Forge Private Limited
22. OM Exports
23. Punjab Steel Works
24. Raaj Sagar Steels
25. Ravi Ratan Metal Industries
26. R.D. Forge
27. Rolex Fittings India Pvt. Ltd.
28. Rollwell Forge Engineering Components and Flanges
29. Rollwell Forge Pvt. Ltd.
30. SHM (ShinHeung Machinery)
31. Siddhagiri Metal & Tubes
32. Sizer India
33. Steel Shape India
34. Sudhir Forgings Pvt. Ltd.
35. Tirupati Forge Pvt. Ltd.
36. Umashanker Khandelwal Forging Limited

[FR Doc. 2022–27223 Filed 12–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–884]

Glycine From India: Final Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers and exporters of glycine from India received countervailable subsidies during the period of review (POR), January 1, 2020, through December 31, 2020.

DATES: Applicable December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks or Scarlet Jaldin AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2670 or (202) 482–4275, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2022, Commerce published the preliminary results of this administrative review in the **Federal Register** and invited interest parties to comment.[1] We received timely case briefs from the Government of India (GOI)[2] and GEO Specialty Chemicals, Inc. (the petitioner),[3] and timely filed rebuttal briefs from the petitioner,[4] and the mandatory respondents in this review, Avid Organics Private Limited (Avid)[5] and Kumar Industries, India (Kumar).[6] On September 29, 2022, Commerce extended the deadline for issuing these final results to December 9, 2022.[7]

Scope of the Order

The merchandise covered by the *Order* is glycine from India. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[8]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties and discussed in the Issues and Decision Memorandum is provided as an appendix to this notice. Based on our analysis of the comments received from interested parties and record information, we made no changes from the *Preliminary Results.* The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's

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[1] *See Glycine from India: Preliminary Results and Recission, in Part, of Countervailing Duty Administrative Review; 2020,* 87 FR 40494 (July 7, 2022) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* GOI's Letter, ''Case Brief on behalf of Government of India,'' dated August 8, 2022.

[3] *See* Petitioner's Letter, ''Glycine from India: Case Brief of GEO Specialty Chemicals, Inc.,'' dated August 8, 2022.

[4] *See* Petitioner's Letter, ''Rebuttal Brief of GEO Specialty Chemicals, Inc.,'' dated August 15, 2022.

[5] *See* Avid's Letter, ''AVID's Rebuttal to Petitioner Case Brief of August 8, 2022,'' dated August 13, 2022.

[6] *See* Kumar's Letter, ''Rebuttal Brief to Petitioner's Case Brief,'' dated August 15, 2022.

[7] *See* Memorandum, ''Extension of Deadline for the Final Results of Countervailing Duty Administrative Review; 2020,'' dated September 29, 2022.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Glycine from India; 2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For a description of the methodology underlying Commerce's conclusions, *see* the Issues and Decision Memorandum.

Final Rate for Non-Selected Company Under Review

There is one company subject to this review that was not selected as a mandatory respondent, *i.e.,* Paras Intermediates Private Ltd. (Paras).[10] Because the final subsidy rates calculated for the mandatory respondents in this review, Avid and Kumar, are above *de minimis* and are not based entirely on facts available,[11] we have continued to apply to Paras a subsidy rate based on a weighted-average of the subsidy rates calculated for Avid and Kumar using publicly ranged sales data for these final results.[12] This methodology for establishing the subsidy rate for the non-selected company is consistent with our practice and with section 705(c)(5)(A) of the Act.

Final Results of Administrative Review

For the period January 1, 2020, through December 31, 2020, we determine that the following net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Avid Organics Private Limited	3.00
Kumar Industries, India[13]	3.11
Paras Intermediates Private Ltd	3.06

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* Commerce will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Non-Selected Company Rate
V. Subsidies Valuation Information
VI. Interest Rates, Discount Rates, and Benchmarks
VII. Analysis of Programs
VIII. Discussion of the Issues
Comment 1: Whether to Apply Adverse Facts Available (AFA) to Kumar
Comment 2: Whether Kumar Received Countervailable Electricity Subsidies from the State Government of Gujarat (SGOG)
Comment 3: Whether Commerce Should Adjust its Benchmark and Benefit Calculations for the SGOG Provision of Water for Less than Adequate Remuneration (LTAR) Program
Comment 4: Whether Avid Used Both the Interest Equalization Scheme (IES) and the Pre-Shipment and Post-Shipment Finance Programs
Comment 5: Whether Commerce has Conducted an Appropriate Review
Comment 6: Whether the Duty Drawback (DDB) Program Is Countervailable
Comment 7: Whether the Export Promotion of Capital Goods and Services (EPCGS) Program Is Countervailable
Comment 8: Whether the Merchandise Export From India Scheme (MEIS) Program Is Countervailable
Comment 9: Whether the SGOG Electricity Duty Exemption Program Is Countervailable
Comment 10: Whether the Pre-Shipment and Post-Shipment Finance Program Is Countervailable
Comment 11: Whether the Interest Subsidy Under Scheme for Assistance of Micro, Small, and Medium Enterprises (MSMEs) as per Gujarat Industrial Policy 2009 Program Is Countervailable
Comment 12: Whether the SGOG Provision of Water for LTAR Program Is Countervailable

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See* Preliminary Decision Memorandum.

[11] The subsidy rates for Avid and Kumar for these final results of review are unchanged from the *Preliminary Results*.

[12] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Preliminary Results Calculation of Subsidy Rate for a Non-Selected Company Under Review,'' dated June 30, 2022 (Non-Selected Rate Calculation Memorandum).

[13] Commerce continues to find that Kumar is cross-owned with Advance Chemical Corporation; therefore, the same subsidy rate applies to both companies. *See* Preliminary Decision Memorandum at 8. We note that the *Initiation Notice* references ''Kumar Industries'' which we have determined is the same company as ''Kumar Industries, India.''

IX. Recommendation

[FR Doc. 2022–27221 Filed 12–14–22; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: : National Institute of Standards and Technology (NIST)'s Visiting Committee on Advanced Technology (VCAT or Committee) will meet on Wednesday, February 8, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time, and Thursday, February 9, 2023, from 8:30 a.m. to 12:00 p.m. Eastern Time.

DATES: The VCAT will meet on Wednesday, February 8, 2023, from 8:30 a.m. to 5:00 p.m. and Thursday, February 9, 2023, from 8:30 a.m. to 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held at the National Cybersecurity Center of Excellence, 9700 Great Seneca Highway, Rockville, Maryland, 20850 with an option to participate via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 240–446–6000. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the VCAT will meet on Wednesday, February 8, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time and Thursday, February 9, 2023, from 8:30 a.m. to 12:00 p.m. Eastern Time. The meeting will be open to the public. The VCAT is composed of not fewer than 9 members appointed by the NIST Director, eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The primary purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs at NIST. Each of the three subcommittees: Subcommittee on Alignment of Manufacturing Efforts, Subcommittee on Visibility Improvement, and Subcommittee on Workforce Development Efforts will present their recommendations to the full Committee. The Committee will also present its initial observations, findings, and recommendations for the 2022 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda by no later than 5:00 p.m. Eastern Time, Wednesday, February 1, 2023 by contacting Stephanie Shaw at *stephanie.shaw@nist.gov.* Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but, is likely to be about 3 minutes each. The exact time and date for public comments will be included in the final agenda that will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person or via webinar are invited to submit written statements to Stephanie Shaw at *stephanie.shaw@nist.gov.*

For participants attending via webinar, please contact Ms. Shaw at *stephanie.shaw@nist.gov* for detailed instructions on how to join the webinar by 5:00 p.m. Eastern Time, Wednesday, February 1, 2023. For participants wishing to attend in person, please submit your name, time of arrival, email address, and phone number to Hope Fato, *hope.fato@nist.gov* by 5:00 p.m. Eastern Time, Wednesday, February 1, 2023. For detailed information please contact Ms. Fato at *hope.fato@nist.gov.*

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Alicia Chambers,
NIST Executive Secretariat.

[FR Doc. 2022–27232 Filed 12–14–22; 8:45 am]
BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Establishing an Advisory Council Pursuant to the National Marine Sanctuaries Act and Solicitation for Applications for the Proposed Hudson Canyon National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of solicitation.

SUMMARY: Notice is hereby given that NOAA is establishing a sanctuary advisory council (council) for the proposed Hudson Canyon National Marine Sanctuary to provide advice and recommendations to ONMS regarding the sanctuary's designation. With this notice, ONMS is soliciting applications for seats on the council. ONMS will add this new council to the list of established national marine sanctuary advisory councils.

DATES: Applications for membership on the proposed Hudson Canyon National Marine Sanctuary Advisory Council must be emailed or postmarked by January 31, 2023.

ADDRESSES: For application submission or further information contact: Ellen Brody, NOAA Office of National Marine Sanctuaries, 4840 South State Road, Ann Arbor, MI 48108, phone: (734) 276–6387, email *Ellen.Brody@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 315 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1445a) authorizes the Secretary of Commerce to establish advisory councils to advise and make recommendations regarding the designation and management of national marine sanctuaries. ONMS is establishing a new sanctuary advisory council for the proposed Hudson Canyon National Marine Sanctuary to serve as a liaison to the local community and provide guidance and advice to ONMS during its designation.

ONMS is adding this new advisory council to the list of councils with open vacancies and announcing that it is soliciting applications to fill the council's seats. Applications are due January 31, 2023.

II. Office of National Marine Sanctuaries (ONMS)

ONMS serves as the trustee for a network of underwater parks encompassing more than 620,000 square miles of marine and Great Lakes waters from Washington State to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 15 national marine sanctuaries and the Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our nation's most vital coastal and marine natural and cultural resources and, through a diverse set of management tools, sustain nationally significant marine and Great Lakes environments that are the foundation for thriving communities and stable economies.

One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. Advisory councils are community-based groups established to provide advice and recommendations to ONMS on issues including management, science, service, and stewardship, as well as to serve as liaisons between their constituents in the community and the sanctuary. Pursuant to Section 315(a) of the NMSA, advisory councils are exempt from the requirements of the Federal Advisory Committee Act. Additional information on ONMS and its advisory councils can be found at *https://sanctuaries.noaa.gov*.

III. Advisory Council Membership

Under Section 315 of the NMSA, the advisory council shall consist of no more than 15 voting members. Members shall be selected by the director from groups representing the diverse perspectives surrounding sanctuary resources, including Federal, State, or local agency employees with expertise in natural resources management; local user-group representatives; conservation and other public interest organizations; scientific and educational organizations; and members of the public interested in the protection and multiple-use management of sanctuary resources. 16 U.S.C. 1455a(b).

The charter for each advisory council defines the number and type of seats and positions on the council. The advisory council charter for the proposed Hudson Canyon National Marine Sanctuary identifies the following voting non-governmental seat types: commercial fishing; recreational fishing; tourism/recreation; conservation; research; business/maritime industry; education/outreach; and citizen at-large. The council will also have non-voting seats for government agencies. Recognizing the cultural significance of this area to Indigenous Nations and Tribes, NOAA welcomes the participation of such interested Nations and Tribes on the council. This could involve multiple Nations and Tribes. Nations and Tribes interested in participating in the advisory council should contact the NOAA representative identified in the **ADDRESSES** section. Participation on the council does not take the place of government-to-government consultation nor does it serve as the only opportunity for engagement between NOAA and Indigenous Nations and Tribes.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the protection and management of marine or Great Lakes resources; and possibly the length of residence in the area affected by the site. Council members and alternates for the proposed Hudson Canyon National Marine Sanctuary Advisory Council serve three-year terms, as reflected in the signed charter.

For more information about the new advisory council for the proposed Hudson Canyon National Marine Sanctuary, including seat descriptions and application materials and instructions, please visit *https://sanctuaries.noaa.gov/hudson-canyon/*. More information on advisory council membership and processes, and materials related to the purpose, policies, and operational requirements for advisory councils can be found in the charter for a particular advisory council (*https://sanctuaries.noaa.gov/management/ac/council_charters.html*) and the National Marine Sanctuary Advisory Council Implementation Handbook (*https://sanctuaries.noaa.gov/media/docs/2022-sanctuary-advisory-council-handbook.pdf*).

B. Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0397) for the collection of public information related to the processing of ONMS national marine sanctuary advisory council applications across the National Marine Sanctuary System. Establishing a sanctuary advisory council for the proposed Hudson Canyon National Marine Sanctuary fits within the estimated reporting burden under that control number. *See https://www.reginfo.gov/public/do/PRASearch* (Enter Control Number 0648–0397). Therefore, ONMS will not request an update to the reporting burden certified for OMB control number 0648–0397.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to: Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is #0648–0397.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–27188 Filed 12–14–22; 8:45 am]

BILLING CODE 3510–NK–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2019–0025]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Non-Full-Size Baby Cribs and Play Yards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has two mandatory rules that incorporate by reference applicable provisions of ASTM F406–19, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards. These mandatory rules are: (1) Safety Standard for Non-Full-Size Baby Cribs, and (2) Safety Standard for Play Yards. The Commission received notice from ASTM International that it has revised ASTM F406–19. CPSC seeks comment on whether the revised voluntary standard, ASTM F406–22, improves the

safety of the consumer products covered by the standard.

DATES: Comments must be received by December 29, 2022.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2019–0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/hand delivery/courier/confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2019–0025, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Fred DeGrano, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2711; email: *fdegrano@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards may be based, in whole or in part, on a voluntary standard.

Pursuant to section 104(b)(4)(B) of the CPSIA, if a voluntary standards organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under CPSIA section 104, it must notify the Commission. The revised voluntary standard then shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or a later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission responds to the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard, and therefore the Commission is retaining its existing mandatory consumer product safety standard. 15 U.S.C. 2056a(b)(4)(B).

Under this authority, the Commission issued two mandatory safety rules that incorporate by reference applicable provisions of ASTM F406: Safety Standard for Non-Full-Size Baby Cribs, codified at 16 CFR part 1220 (75 FR 81787, Dec. 28, 2010), and Safety Standard for Play Yards, codified at 16 CFR part 1221 (77 FR 52228, Aug. 29, 2012). These mandatory standards include performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children. After the Commission's promulgation of these final rules, ASTM published several revisions to ASTM F406 that the Commission allowed to take effect, most recently in 2019. 84 FR 56684 (Oct. 23, 2019).

On December 5, 2022, ASTM notified the Commission that it had approved and published another revised version of the voluntary standard, ASTM F406–22. CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of non-full-size baby cribs subject to 16 CFR part 1220, and, separately, the safety of play yards subject to 16 CFR part 1221. The Commission invites public comment on those questions to inform staff's assessment and subsequent Commission consideration of the revisions in ASTM F406–22. The Commission particularly seeks comment on the impact of ASTM F406–22's revisions regarding mattress thickness, gap measurement, and the length of loops for cords/straps.[1]

A read-only copy of a redline demonstrating revisions to ASTM F406 is available for review on ASTM's website (*https://www.astm.org/CPSC.htm*), at no cost. Likewise, a read-only copy of the existing, incorporated standard, ASTM F406–19, is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties may schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

Comments must be received by December 29, 2022. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–27173 Filed 12–14–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Department of the Army Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: This document amends the previous notice published in the **Federal Register** on Friday, November 2, 2022. This notice respectively amends the total number of names from 87 to 89.

DATES: The term began on November 1, 2022.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111, *Barbara.M.Smith.civ@army.mil* or Phone (703) 693–1126.

SUPPLEMENTARY INFORMATION:

[1] The Commission voted 4–0 to publish this notice.

Amendment

In the **Federal Register** of November 2, 2022, in FR Doc 87 FR 66167 the **SUPPLEMENTARY INFORMATION** is amended to read:

The list is amended to add the following participants to the list of Performance Review Board members:

1. Ms. Denise A. Council-Ross, Principal Deputy General Counsel, Office of the General Counsel
2. HON Rachel Jacobson, Assistant Secretary of the Army, (Installations, Energy and Environment), Office of Assistant Secretary of the Army, (Installations, Energy and Environment)

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2022–27229 Filed 12–14–22; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4108–018]

City of St. Cloud; Notice Rejecting Application, Waiving Regulations, and Soliciting Applications

On December 1, 2022, the City of St. Cloud, licensee for the St. Cloud Hydroelectric Project No. 4108 (project), filed an application for a new license for the project pursuant to section 15(c)(1) of the Federal Power Act (FPA). The license application was untimely filed and is hereby rejected.[1]

The project is located on the Mississippi River approximately 75 miles northwest of St. Paul, Minnesota in the City of St. Cloud, Stearns and Sherburne Counties, Minnesota. The project consists of: (1) an approximately 3.5-mile-long, 294-surface-acre reservoir with a storage capacity of 2,254 acre-feet at a normal pool elevation of 981.0 feet National Geodetic Vertical Datum of 1929; (2) a 420-foot-long earthen embankment that abuts the east side of the dam; (3) a 550-foot-long, 19.5-foot-high concrete gravity dam and main spillway topped with inflatable crest gates; (4) a 50-foot-wide spillway containing two 20-foot-wide Tainter gates; (5) a 70-foot-wide, 122-foot-long reinforced concrete powerhouse containing two turbine-generator units with a total installed generating capacity of 8.64 megawatts and with an average annual generation of 51,500 megawatt-hours; (6) a 200-foot-long earthen embankment that abuts the west side of the dam; (7) an underground 180-foot-long, 5-kilovolt (kV) transmission line connecting the powerhouse to a step-up transformer; (8) a 5/34.5-kV step-up transformer; (9) an underground 900-foot-long, 34.5-kV transmission line connecting the step-up transformer to a non-project substation; and (10) appurtenant facilities.

As a result of the rejection of the City of St. Cloud's application and pursuant to section 16.25 of the Commission's regulations, the Commission is soliciting license applications from potential applicants. This solicitation is necessary because the deadline for filing an application for a new license and any competing license applications, pursuant to section 16.9 of the Commission's regulations, was November 30, 2022, and no other license applications for this project were filed. With this notice, we are waiving those parts of section 16.24(a) and 16.25(a) which bar an existing licensee that missed the two-year application filing deadline from filing another application. Further, because the City of St. Cloud completed the consultation requirements pursuant to Part 5 of the Integrated Licensing Process, we are waiving the consultation requirements in section 16.8 for the existing licensee. Consequently, the City of St. Cloud will be allowed to refile a license application and compete for the license and the incumbent preference established by the FPA section 15(a)(2) will apply.[2]

The licensee is required to make available certain information described in section 16.7 of the regulations. For more information from the licensee, please contact Ms. Tracy Hodel, Public Services Director, City of St. Cloud, 1201 7th Street South, St. Cloud, Minnesota 56301, (320) 255–7226.

Pursuant to Section 16.25(b), a potential applicant that files a notice of intent within 90 days from the date of this notice: (1) may apply for a license under Part I of the FPA and Part 4 (except section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with sections 16.8 and 16.10 of the Commission's Regulations.

Questions concerning this notice should be directed to Nicholas Ettema, (312) 596–4447 or *nicholas.ettema@ferc.gov.*

Dated: December 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27203 Filed 12–14–22; 8:45 am]

BILLING CODE 6717–01–P

[1] The City of St. Cloud was issued a major license for the project on December 5, 1984, for a term of 40 years, effective the first day of the month in which the order was issued. See 29 FERC ¶ 62,233 (1984). Therefore, the license would expire on November 30, 2024, and the statutory deadline for filing a new license application was November 30, 2022. See FPA § 15(c)(1), 16 U.S.C. 808(c)(1). The Commission received the application via the internet at 6:42 p.m. Eastern Time, which is after regular business hours (*i.e.,* after 5:00 p.m. Eastern Time), on November 30, 2022; therefore, the application is considered filed on the next regular business day, December 1, 2022. See 18 CFR 385.2001(a)(2) (2021).

[2] See Pacific Gas and Electric Co., 98 FERC ¶ 61,032 (2002), reh'g denied, 99 FERC ¶ 61,045 (2002), aff'd, *City of Fremont* v. *FERC*, 336 F.3d 910 (9th Cir. 2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7590–016]

City of Nashua, New Hampshire; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380, Commission staff reviewed City of Nashua, New Hampshire's application for an amendment to the exemption of the Jackson Mills Hydroelectric Project No. 7590 and have prepared an Environmental Assessment (EA). The licensee proposes to replace the aging turbine/generator. The riverbed immediately downstream of the powerhouse will be recontoured to allow for the proper placement of the new turbine/generator. The project is located on the Nashua River in the Hillsborough County, New Hampshire. The project does not occupy federal lands.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment to the exemptee, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–7590) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

For further information, contact Jeffrey V. Ojala at 202–502–8206 or *Jeffrey.Ojala@ferc.gov.*

Dated: December 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27202 Filed 12–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–568–000]

Big Cypress Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Big Cypress Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 29, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27200 Filed 12–14–22; 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: RP23–205–000.
Applicants: MountainWest Pipeline, LLC.
Description: Annual Gas Sales Report of MountainWest Pipeline, LLC.
Filed Date: 11/22/22.
Accession Number: 20221122–5233.
Comment Date: 5 p.m. ET 12/15/22.

Docket Numbers: RP23–272–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: New NRA—Performance Proppants, LLC to be effective 12/12/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5035.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: RP23–273–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Castleton SP377543 SP377544 SP378154 SP378159 Citadel SP378150 to be effective 1/1/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5036.
Comment Date: 5 p.m. ET 12/21/22.

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: December 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27198 Filed 12–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–29–000.
Applicants: Moss Landing Energy Storage 3, LLC, Vistra Corp.
Description: Moss Landing Energy Storage 3, LLC et. al. submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/8/22.
Accession Number: 20221208–5216.
Comment Date: 5 p.m. ET 12/29/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–14–000.
Applicants: Alternative Transmission Inc.
Description: Petition for Declaratory Order of [Alternative Transmission Inc.].
Filed Date: 12/9/22.
Accession Number: 20221209–5093.
Comment Date: 5 p.m. ET 12/30/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3177–002; ER10–3181–005; ER10–3285–004; ER17–991–009.

Applicants: Hunlock Energy, LLC, UGI Utilities Inc., UGI Development Company, UGI Energy Services, Inc.
Description: Triennial Market Power Analysis for Northeast Region and Notice of Change in Status of UGI Energy Services, LLC, et al.
Filed Date: 12/8/22.
Accession Number: 20221208–5218.
Comment Date: 5 p.m. ET 2/6/23.

Docket Numbers: ER22–26–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing to Nov. 9, 2022 Order Approving Settlement in ER22–26 to be effective 2/1/2023.
Filed Date: 12/8/22.
Accession Number: 20221208–5111.
Comment Date: 5 p.m. ET 12/29/22.

Docket Numbers: ER22–2158–002.
Applicants: Public Service Company of New Mexico.
Description: Compliance filing: Compliance Filing Re November 8, 2022 Order to be effective 6/22/2022.
Filed Date: 12/8/22.
Accession Number: 20221208–5120.
Comment Date: 5 p.m. ET 12/29/22.

Docket Numbers: ER23–72–001.
Applicants: Omaha Public Power District, Southwest Power Pool, Inc.
Description: Tariff Amendment: Omaha Public Power District submits tariff filing per 35.17(b): Omaha Public Power District Amended Revisions to Formula Rate Protocols to be effective 2/8/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5017.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–582–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2022–12–08 GRE FSA Eidswold Sub 717–NSP to be effective 12/9/2022.
Filed Date: 12/8/22.
Accession Number: 20221208–5113.
Comment Date: 5 p.m. ET 12/29/22.

Docket Numbers: ER23–583–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6605; Queue No. AB1–056 (correction) to be effective 8/16/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5027.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–584–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ICSA, SA No. 4220; Queue No. AA1–034 to be effective 9/16/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5031.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–585–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Virginia Electric and Power Company submits tariff filing per 35.13(a)(2)(iii: Dominion submits One WDSA, SA No. 6524 to be effective 12/1/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5034.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–586–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–12–09_SA 3379 NIPSCO-Meadow Lake Solar Park 1st Rev GIA (J913) to be effective 12/2/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5039.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–587–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Update the Available Flowgate Capability Calculation Process to be effective 2/21/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5051.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–588–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Southeast EEM Agreement Amendment Filing (Exhibit A Revisions) to be effective 1/1/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5054.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–589–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4322; Queue No. Z1–036 to be effective 12/3/2015.
Filed Date: 12/9/22.
Accession Number: 20221209–5063.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–590–000.
Applicants: Chaves County Solar II, LLC.
Description: Baseline eTariff Filing: Chaves County Solar II, LLC Application for Market-Based Rate Authority to be effective 2/8/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5091.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–592–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6731; Queue No. AE2–248 to be effective 11/9/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5117.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–593–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PJM submits Amended NJ State Agreement Approach Study Agreement, SA No. 5890 to be effective 11/18/2020.
Filed Date: 12/9/22.
Accession Number: 20221209–5118.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–594–000.
Applicants: Massachusetts Electric Company.
Description: Tariff Amendment: 2022–12–09 Notice of Cancellation of Service Agreement No. IA–MECO–28–01 to be effective 2/8/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5147.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–595–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Transmission Access Charge Balancing Account Adjustment (TACBAA) 2023 to be effective 3/1/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5153.
Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER23–596–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Shady Hills—Amended and Restated LGIA SA No. 230 to be effective 12/3/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5154.
Comment Date: 5 p.m. ET 12/30/22.

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: December 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27199 Filed 12–14–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—10486–01–OA]

Public Meeting of the Science Advisory Board BenMAP and Benefits Methods Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board BenMAP and Benefits Methods Panel. The purpose of the meeting is to receive a presentation on charge questions and a demonstration of the EPA's new cloud-based BenMAP model from EPA's Office of Air and Radiation. The panel will schedule a future public meeting in early Spring 2023 to review and discuss BenMAP and benefits methods that calculate estimated air pollution-related deaths and illnesses and their associated economic values. Additional information, materials, background and meeting agendas for future activities will be posted on SAB's website at: *https://sab.epa.gov.*

DATES: The virtual public meeting of the SAB BenMAP and Benefits Methods Panel will be held on January 13, 2023, from 1 p.m. to 4 p.m. Eastern Standard time.

ADDRESSES: The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for details on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone (202) 564–2073, or email at *stallworth.holly@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board BenMAP and Benefits Methods Panel will hold a public meeting to receive a presentation on the charge questions and a demonstration of the BenMAP model.

Availability of Meeting Materials: Prior to the meeting, the agenda and other materials will be accessible on the SAB website under the meeting date (which may be found under Meetings and Events). Information on the BenMAP model and charge questions associated with this review will also be posted at this site.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted by video will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by January 5, 2023, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by January 5, 2023, for consideration at the January 13, 2023 meeting. Written statements should be supplied to the DFO at the contact information above. It is the SAB Staff Office general policy to post written comments on the web page for the meeting. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites.

Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Holly Stallworth, at 202.564.2073 or *stallworth.holly@epa.gov,* preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2022–27172 Filed 12–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0896; FRL–10438–01–OCSPP]

DQB Males (Wolbachia pipientis, DQB Strain, Contained in Live Adult Culex quinquefasciatus Males); Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Hawaii Department of Agriculture for use of the pesticide DQB Males (*Wolbachia pipientis,* DQB strain, contained in live adult *Culex quinquefasciatus* males), to treat up to 20,000 acres of State, Federal, and private wildlife conservation areas throughout the State of Hawaii and to control *Culex quinquefasciatus* mosquitoes, a vector of avian malaria. The applicant proposes a new use of a microbial pesticide which has not been registered by EPA. Therefore, in

accordance with Code of Federal Regulations, EPA is soliciting public comment before making the decision whether to grant the exemption.

DATES: Comments must be received on or before December 30, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0896, and the specific case number for the chemical substance related to your comment, through the *Federal eRulemaking Portal* at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html*. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer, North American Industrial Classification System (NAICS) (Code 32532) or involved with Hawaiian wildlife conservation areas that have known populations of *Culex quinquefasciatus*. This listing is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

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

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Hawaii Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of DQB males for conservation purposes to control mosquitoes (*Culex quinquefasciatus*), which are a known vector to avian malaria and threaten Hawaii's endemic forest bird population. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that avian malaria was introduced into the Hawaiian Islands in the 19th century and spread by a non-native mosquito. Hawaii is experiencing increased mosquito populations that have significantly reduced Hawaiian bird populations. According to the applicant, without mosquito control, the survival and recovery of Hawaii's few remaining forest birds, including threatened and endangered species, are at imminent risk.

The applicant proposes to make 156 maximum applications of DQB male mosquitoes per release site per year based on an anticipated maximum of 3 releases per week. The total number of application days is a maximum of 156 during the year. The total amount of DQB Males to be applied per year to treat conservation lands throughout Hawaii is up to 3,000,000 male mosquitoes per week or 156,000,000 males per year. The maximum amount of *Wolbachia pipientis,* DQB strain, to be applied per year is up to ~1.83g/week or 95g/year.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a new use of a microbial pesticide (*i.e.,* an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Hawaii Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 8, 2022.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2022–27220 Filed 12–14–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2022–6033]

Agency Information Collection Activities: Comment Request; EIB 92–51 Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies

AGENCY: Export-Import Bank.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies is used by policyholders, the majority of whom are U.S. small businesses, who export U.S. goods and services. This

application provides EXIM Bank with the credit information on a foreign buyer credit limit request needed to make a determination of eligibility for EXIM Bank support in adherence to legislatively required reasonable reassurance of repayment and other statutory requirements. The application can be reviewed at: *https://img.exim.gov/s3fs-public/pub/pending/eib-92-51.pdf.* Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies.

DATES: Comments should be received on or before February 13, 2023 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Ms. Risa Pickle, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–51 Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies.

OMB Number: 3048–0015.

Type of Review: Regular.

Need and Use: This application provides EXIM Bank with the credit information on a foreign buyer credit limit request needed to make a determination of eligibility for EXIM Bank support in adherence to legislatively required reasonable reassurance of repayment and other statutory requirements.

The changes to this form are intended to improve the sequence and layout of the foreign buyer credit questions and add description of the drop-down menus.

Affected Public: This form affects business entities involved in the export of U.S. goods and services. The estimated number of respondents and the annual hour burden has been lowered to only count the new applicants. The estimate of the overall burden to the public has been reduced after considering that EXIM automatically processes renewals of Special Buyer Credit Limit requests in the Exim Online (EOL) system, and, thus, the renewing policyholders don't have to manually complete an application.

The number of respondents: 2,000.

Estimated time per respondents: 30 minutes.

The frequency of response: As needed.

Annual hour burden: 1,000 total hours.

Government Expenses:

Reviewing time per hour: 1 hour.

Responses per year: 2,000.

Reviewing time per year: 2,000 hours.

Average Wages per hour: $42.50.

*Average cost per year (time * wages):* $ 85,000.

Benefits and overhead: 20%.

Total Government Cost: $ 102,000.

Andy Chang,

Director, IT Records Management, Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–27165 Filed 12–14–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 11:28 a.m. on Tuesday, December 13, 2022.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Rohit Chopra (Director, Consumer Financial Protection Bureau), seconded by, Director Michael J. Hsu (Acting Comptroller of the Currency) and concurred in by Acting Chairman Martin J. Gruenberg, that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 13th day of December, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–27355 Filed 12–13–22; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–23]

Marine Transport Logistics, Inc., Complainant v. CMA–CGM (America), LLC, and CMA–CGM S.A Respondents; Notice of Filing of Complaint and Assignment

Served: December 9, 2022.

Notice is given that a Verified Amended Complaint has been filed with the Federal Maritime Commission (Commission) by Marine Transport Logistics, Inc., hereinafter ''Complainant,'' against CMA–CGM (America), Inc. and CMA–CGM S.A., hereinafter ''Respondents.'' Complainant states that it is a non-vessel-operating common carrier organized under the laws of the State of New York. Complainant identifies CMA–CGM S.A. as a vessel-operating common carrier (VOCC) based in France, and CMA–CGM (America) LLC as the VOCC's agent in the United States with offices in New Jersey and Virginia.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c) in its practices regarding the shipment of Complainant's container cargo and the charges incurred as a result. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-23/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by September 7, 2023, and the final decision of the Commission shall be issued by March 21, 2024.

William Cody,

Secretary.

[FR Doc. 2022–27160 Filed 12–14–22; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed

information collection project ''The AHRQ Safety Program for Telemedicine: Improving the Diagnostic Process and Improving Antibiotic Use.''

DATES: Comments on this notice must be received by February 13, 2023.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

The AHRQ Safety Program for Telemedicine: Improving the Diagnostic Process and Improving Antibiotic Use

Telemedicine visits increased dramatically in response to the COVID–19 pandemic and resulting changes in third-party payer reimbursement policies. Telemedicine visits increased from 0.3 percent of all ambulatory visits in 2019 to 23.6 percent by Spring 2020. Given this rapid growth, the need to ensure safe and appropriate patient care in this setting is urgent. Telemedicine has many benefits, such as facilitating continuity of care; improving access beyond normal hours; reducing patients' travel burden; overcoming health care provider (HCP) shortages; and providing support for patients managing chronic health conditions. However, transferring clinical practices from an in-person to a virtual environment poses potential risks. Many HCPs have never received formal training in using telemedicine effectively to diagnose and treat patients virtually. Additionally, inadequate internet access, which disproportionately impacts rural and minority populations, and struggles accessing telemedicine platforms may force video-based telemedicine visits to transition to audio-only or be skipped.

This program aims to improve two at-risk areas among telemedicine practices by implementing the AHRQ- and Johns Hopkins Armstrong Institute for Patient Safety and Quality (JHAI)-developed Comprehensive Unit-based Safety Program (CUSP) approach: (1) the diagnostic process for breast, colorectal, and lung cancer; and (2) antibiotic stewardship (AS). The CUSP approach improves safety culture at the practice level, enables harm prevention, and engages providers who are on the front lines while integrating technical and adaptive/cultural approaches to making sustainable changes.

This program constitutes the first large-scale implementation of a quality improvement effort for the cancer diagnostic process and AS in telemedicine. These areas were chosen given the need for clearer guidance and evidence-based telemedicine practices for clinicians and potential for positive impact on outcomes. This program will incorporate CUSP strategies to improve the diagnostic process for breast, colorectal, and lung cancer and to improve antibiotic prescribing in telemedicine. The program goals are to:

- Identify best practices in implementing interventions to improve the cancer diagnostic process and AS in telemedicine.
- Determine how best to adapt CUSP to enhance the cancer diagnostic process and AS in telemedicine.

This study is being conducted by AHRQ through its contractor, NORC at the University of Chicago (NORC) and NORC's subcontractors, the Johns Hopkins Armstrong Institute of Patient Safety and Quality (JHAI) and Baylor College of Medicine (Baylor), pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2)

Method of Collection

To achieve the goals of the AHRQ Safety Program for Telemedicine (''Safety Program''), primary and secondary data collection activities will include:

(1) *Structural Assessment:* A brief online assessment will be completed by a leader/champion from each practice to understand practices' infrastructure and capacity to implement the Safety Program.

(2) *AHRQ Office Readiness Survey:* A brief online Office Readiness Survey will be completed by all participating staff from each practice in the cancer diagnostic process cohort to understand practices' readiness for implementation of the Safety Program.

(3) *The AHRQ Surveys on Patient Safety Culture:* The Medical Office Survey on Patient Safety Culture (MOSOPS) (both cohorts) and a Diagnostic Safety Supplement (cancer diagnostic process cohort only) will be completed by all participating staff to assess patient safety issues, medical errors, and event reporting practices.

(4) *Participant Experience Survey:* A brief online assessment will be completed by a leader/champion from each practice to assess how practices approached implementation of the Safety Program.

(5) *Semi-Structured Qualitative Interviews:* A proportion of practices from both cohorts will be selected to participate in telephone/virtual discussions to understand the facilitators and barriers to implementing the Safety Program.

(6) *Clinical Data Collection Form:* Practices in the cancer diagnostic process cohort will complete a Clinical Data Collection Form for patients suspected of having breast, colorectal, or lung cancer.

(7) *Electronic Health Record (EHR) Data:* Practice-level antibiotic usage and clinical outcomes data will be extracted from the EHRs of practices in the AS cohort.

This data collection effort will be part of a comprehensive evaluation strategy to assess the adoption of the Safety Program among telemedicine practices comprising the cancer diagnostic process and AS cohorts; measure the effectiveness of the Safety Program among the participating practices and evaluate how providers experienced the program as well as the perceived usefulness of the Safety Program's education materials and metrics; and understand drivers of antibiotic prescribing among practices in the AS cohort and drivers of timely diagnosis for patients suspected of having breast, colorectal, or lung cancer among practices in the cancer diagnostic process cohort.

The evaluation is largely formative in nature as AHRQ seeks information on the implementation and effectiveness of CUSP in a novel setting—telemedicine. The evaluation will utilize a pre-post design, comparing data collected at baseline and at the end of the Safety Program within each cohort.

Estimated Annual Respondent Burden

Exhibit A.1 shows the estimated annualized burden hours for the respondents' time to complete the structural assessments, AHRQ office readiness and patient safety culture surveys, participant experience surveys, semi-structured qualitative interviews, clinical data collection instrument (collected for 3 patients monthly and submitted quarterly), and EHR data extractions (collected monthly and submitted quarterly). Data will be collected from up to 300 practices providing telemedicine for the cancer diagnostic process cohort and from up to 500 practices providing telemedicine

for the AS cohort. For the three-year clearance period, the estimated annualized burden hours for the data collection activities are 5,570.

EXHIBIT A.1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
1. Structural Assessments (both cohorts)	200	2	0.2	80
2. AHRQ Office Readiness Survey (cancer diagnostic process cohort only)	350	1	0.1	35
3. AHRQ Patient Safety Culture Surveys:				
a. MOSOPS (both cohorts)	933	2	0.5	933
b. Diagnostic Safety Supplement (cancer diagnostic process cohort only)	350	2	0.2	140
4. Participant Experience Survey (both cohorts):				
a. Cancer diagnostic process cohort survey	75	1	0.17	13
b. AS cohort survey	125	1	0.33	41
5. Semi-structured qualitative interviews (both cohorts)	24	1	1	24
6. Clinical Data Collection Form (cancer diagnostic process cohort)	90	54	0.33	1,604
7. HER data (AS cohort)	150	18	1	2,700
Total				5,570

* Annualized number of respondents is based on maximum practices recruited and 75% response rate for forms 1 and 4a and 4b, 50% response rate for forms 2, 3a and 3b, and 90% response rate for forms 5–7.

Exhibit A.2 shows the estimated annualized cost burden based on the respondents' time to complete the data collection forms. The total cost burden is estimated to be $576,922.

EXHIBIT A.2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents *	Total burden hours	Average hourly wage rate **	Total burden cost
1. Structural Assessments (both cohorts)	200	80	[a] $111.30	$8,904
2. AHRQ Office Readiness Survey (cancer diagnostic process cohort only)	350	35	[a] 111.30	3,896
3. AHRQ Patient Safety Culture Surveys:				
a. MOSOPS (both cohorts):				
i. Physicians	466	466	[a] 111.30	51,866
ii. Other Health Practitioners	467	467	[b] 31.19	14,566
b. Diagnostic Safety Supplement (cancer diagnostic process cohort only):				
i. Physicians	175	70	[a] 111.30	7,791
ii. Other Health Practitioners	175	70	[b] 31.19	2,183
4. Participant Experience Survey (both cohorts)	200	54	[a] 111.30	6,010
5. Semi-structured qualitative interviews (both cohorts)	24	24	[a] 111.30	2,671
6. Clinical Data Collection Form (cancer diagnostic process cohort only)	90	1,604	[a] 111.30	178,525
7. EHR data (AS cohort only)	150	2,700	[a] 111.30	300,510
Total	3,497	5,582		576,922

* Annualized number of respondents is based on maximum practices recruited and 75% response rate for forms 1 and 4, 50% response rate for forms 2, 3a and 3b, and 90% response rate for forms 5–7.

** National Compensation Survey: Occupational wages in the United States May 2021 "U.S. Department of Labor, Bureau of Labor Statistics:" *https://www.bls.gov/oes/current/oes_stru.htm#29-0000*.

[a] Based on the mean wages for *29–1069 Physicians and Surgeons, All Other*.

[b] Based on the mean wages for *29–9099 Miscellaneous Health Practitioners and Technical Workers: Healthcare Practitioners and Technical Workers, All Other*.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 9, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–27175 Filed 12–14–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–R–5 & CMS–10146]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 17, 2023.*

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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Certifications/Recertifications in Skilled Nursing Facilities Manual Instruction; *Use:* Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA1989, Pub. L. 101–239), section 1814(a)(2) of the Act required that, in the case of posthospital extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF on an inpatient basis.

The Medicare program requires, as a condition for Medicare Part A payment for posthospital skilled nursing facility (SNF) services, that a physician or other authorized practitioner must certify and periodically recertify that a beneficiary requires an SNF level of care. The physician certification and recertification is intended to ensure that the beneficiary's need for services has been established and then reviewed and updated at appropriate intervals. The documentation is a condition for Medicare Part A payment for post-hospital SNF care. *Form Number:* CMS–R–5 (OMB control number 0938–0454); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 2,315,259; *Number of Responses:* 2,315,259; *Total Annual Hours:* 522,199. (For policy questions regarding this collection contact Kia Burwell at 410–786–7816).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* Part D plan sponsors are required to issue the Notice of Denial of Medicare Prescription Drug Coverage notice when a request for a prescription drug or payment is denied, in whole or in part. The written notice must include a statement, in understandable language, the reasons for the denial and a description of the appeals process.

The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process. *Form Number:* CMS–10146 (OMB control number 0938–0973); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 683; *Number of Responses:* 2,627,898; *Total Annual Hours:* 656,975. (For policy questions regarding this collection contact Coretta Edmondson at 410–786–0512).

Dated: December 9, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–27167 Filed 12–14–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2728]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 13, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:____,Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–2728 End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration; *Use:* Section 226A (2) of the Social Security Act specifically states that a person must be ''medically determined to have end stage renal disease . . . .'' Similarly, Section 188(a) of the law states ''The benefits provided by parts A and B of this title shall include benefits for individuals who have been determined to have end stage renal disease as provided in Section 226A''. The End Stage Renal Disease (ESRD) Medical Evidence (CMS–2728) is completed for all ESRD patients either by the first treatment facility or by a Medicare-approved ESRD facility when it is determined by a physician that the patient's condition has reached that stage of renal impairment that a regular course of kidney dialysis or a kidney transplant is necessary to maintain life.

The data reported on the CMS–2728 is used by the Federal Government, ESRD Networks, treatment facilities, researchers and others to monitor and assess the quality and type of care provided to end stage renal disease beneficiaries. The data collection captures the specific medical information required to determine the Medicare medical eligibility of End Stage Renal Disease claimants. It also collects data for research and policy on this population.

The three main data systems available for evaluating the ESRD program and for monitoring epidemiology, access, and quality and reimbursement effects on quality are: (1) The United States Renal Data System (USRDS) provides basic data on patterns of incidence of ESRD in the United States. The USRDS database is intended to be used for biomedical research by investigators throughout the United States and abroad. The USRDS data is intended to supplement (and not replace) public use files produced by CMS. (2) United Network for Organ Sharing (UNOS) focus is on organ donation, transplantation and educational activities. (3) The ESRD Program Management and Medical System (PMMIS), maintained by CMS, provide the foundation data for the USRDS. This system, as required by Public Law 95–292, section C(1) (A), is designed to serve the needs of the Department of Health and Human Services in support of program analysis, policy development, and epidemiological research.

The ESRD PMMIS includes information on both Medicare and non-Medicare ESRD patients and on Medicare approved ESRD hospitals and dialysis facilities. The methods of ESRD data collection (*e.g.,* use of same forms, sharing of analysis) by CMS, UNOS, and USRDS have all agreed on a common data collection process that will provide needed additional information on the ESRD population.

Due to response by the provider community the CMS–2728 form has been revised by adding questions, clarifying questions, updating reasons for kidney failure, updating comorbidities to be more reflective of pediatric patients, and providing additional guidance and clarity in the instructions. *Form Number:* CMS–2728

(OMB control number: 0938–0046); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 7,828; *Total Annual Responses:* 138,000; *Total Annual Hours:* 138,000. (For policy questions regarding this collection contact Lisa Rees at (816) 426–6353).

Dated: December 12, 2022.

William N. Parham, III

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–27233 Filed 12–14–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10527, CMS–10260, CMS–10836 and CMS–855A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 13, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ______, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10527 Annual Eligibility Redetermination, Product Discontinuation and Renewal Notice
CMS–10260 Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3)
CMS–10836 Medicare Plan Performance Warning Information
CMS–855A Medicare Enrollment Application for Institutional Providers

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual Eligibility Redetermination, Product Discontinuation and Renewal Notice; *Use:* Section 1411(f)(1)(B) of the Affordable Care Act directs the Secretary of Health and Human Services (the Secretary) to establish procedures to redetermine the eligibility of individuals for premium tax credits on a periodic basis in appropriate circumstances. Section 1321(a) of the Affordable Care Act provides authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, qualified health plans (QHPs) and other components of title I of the Affordable Care Act. Under section 2703 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and former section 2712 and section 2741 of the PHS Act, enacted by the Health Insurance Portability and Accountability Act of 1996, health insurance issuers in the group and individual markets must guarantee the renewability of coverage unless an exception applies.

The 2014 final rule ''Patient Protection and Affordable Care Act; Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs; Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges'' (79 FR 52994, September 5, 2014), provides that an Exchange may choose to conduct the annual redetermination process for a plan year (1) in accordance with the existing procedures described in 45 CFR 155.335; (2) in accordance with procedures described in guidance issued by the Secretary for the applicable benefit year; or (3) using an alternative procedure proposed by the Exchange and approved by the Secretary. The 2014 final rule established a renewal and reenrollment hierarchy at 45 CFR 155.335(j) to minimize potential enrollment disruptions. The 2016 final rule ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017'' (81 FR 12204, March 8, 2016) amended the enrollment

hierarchy to further minimize potential disruptions of enrollee eligibility for cost-sharing reductions.

The guidance document ''Guidance on Annual Eligibility Redetermination and Re-enrollment for Exchange Coverage for 2019 and Later Years'' contains the procedures that the Secretary is specifying for the coverage year, as noted in (2) above, and specifies that these procedures will be used by all Exchanges using the federal eligibility and enrollment platform, unless otherwise specified in future guidance or rulemaking.

The 2014 final rule also amended the requirements for product renewal and re-enrollment (or non-renewal) notices to be sent by QHP issuers in the Exchanges and specifies content for these notices. The guidance document ''Updated Federal Standard Renewal and Product Discontinuation Notices, and Enforcement Safe Harbor for Product Discontinuation Notices in Connection with the Open Enrollment Period for Coverage in the Individual Market in the 2020 Benefit Year'' provides standard notices for product discontinuation and renewal to be sent by issuers of individual market QHPs and issuers in the individual market.[1]

The federal standard notices to be sent by issuers of individual market QHPs and issuers in the individual market have been revised to improve consumer understanding and update out-of-date information. The revised notices in this information collection will be required for notices provided in connection with coverage beginning in the 2024 plan year.

Issuers in the small group market may use the draft federal standard small group notices released in the June 26, 2014 bulletin ''Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market'', or any forms of the notice otherwise permitted by applicable laws and regulations. States that are enforcing the guaranteed renewability provisions of the Affordable Care Act may develop their own standard notices for product discontinuances, renewals, or both, provided the state-developed notices are at least as protective as the federal standard notices. *Form Number:* CMS–10527 (OMB control number: 0938–1254); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments; *Number of Respondents:* 1,340; *Total Annual Responses:* 5,881; *Total Annual Hours:* 72,147. (For policy questions regarding this collection contact Usree Bandyopadhyay at 410–786–6650.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3); *Use:* CMS requires MA organizations and Part D sponsors to use the standardized documents being submitted for OMB approval to satisfy disclosure requirements mandated by section 1851 (d)(3)(A) of the Act and § 422.111 for MA organizations and section 1860D–1(c) of the Act and § 423.128(a)(3) for Part D sponsors. The regulatory provisions at §§ 422.111(b) and 423.128(b) require MA organizations and Part D sponsors to disclose plan information, including: service area, benefits, access, grievance and appeals procedures, and quality improvement/assurance requirements. MA organizations and sponsors may send the ANOC separately from the EOC, but must send the ANOC for enrollee receipt by September 30. The required due date for the EOC is 15 days prior to the start of the AEP.

CMS requires MA organization and Part D sponsors to submit marketing materials to CMS for review prior to the MA organization or sponsor distributing those materials to the public. In section 1851(h), paragraphs (1), (2), and (3) establish this requirement for MA organizations. Section 1860D–1(b)(1)(B)(vi) directs Part D sponsors to follow the same requirements in section 1851(h) that MA organizations must follow for this purpose. *Form number:* CMS–10260 (OMB control number: 0938–1051); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 800; *Number of Responses:* 48,439; *Total Burden Hours:* 13,568. (For questions regarding this collection contact Elizabeth Jacob at 410–786–8658).

3. *Type of Information Collection Request:* New collection (Request for new OMB control number); *Title of Information Collection:* Medicare Plan Performance Warning Information; *Use:* The Centers for Medicare & Medicaid Services (CMS) is seeking approval to collect information to assist in the Agency's response to two reports from the Department of Health and Human Services Office of the Inspector General (OIG) related to how the agency conveys information on plan performance.

CMS is conducting this research to respond to OIG's recommendations related to sharing additional information with beneficiaries on plan performance in a clear and accessible format, particularly related to information which may warn or caution beneficiaries about plan performance issues. CMS is seeking to learn more about how beneficiaries, caregivers, and the intermediaries who assist them use and understand the information CMS currently makes (or may make) available, as well as to assess their interest in accessing this information. *Form number:* CMS–10836 (OMB control number: 0938–New); *Frequency:* Annually; *Affected Public:* Individuals and Households; *Number of Respondents:* 288; *Number of Responses:* 288; *Total Burden Hours:* 497. (For questions regarding this collection contact Elizabeth Goldstein at 443 845–6993).

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application for Institutional Providers; *Use:* The primary function of the CMS–855A Medicare enrollment application is to gather information from a certified provider or certified supplier that tells us who it is, whether it meets certain qualifications to be a health care provider, where it practices or renders services, the identity of its owners, and other information necessary to establish correct claims payments.

In addition, on July 26, 2022, CMS published in the **Federal Register** a proposed rule titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating'' (CMS–1772–P) (87 FR 44502). This proposed rule outlined requirements that rural emergency hospitals (REHs)—a new Medicare provider type established pursuant to Section 125 of Division CC of the Consolidated Appropriations Act, 2021—must meet in order to bill Medicare for REH services. This

[1] Updated Federal Standard Renewal and Product Discontinuation Notices, and Enforcement Safe Harbor for Product Discontinuation Notices in Connection with the Open Enrollment Period for Coverage in the Individual Market in the 2020 Benefit Year (July 30, 2019) available at: *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-Federal-Standard-Notices-and-Enforcement-Safe-Harbor-for-Discontinuation-Notices-PY2020.pdf.* This bulletin was revised on July 31, 2020 to add a link to the federal standard notices to be used beginning in the 2021 plan year: *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-Federal-Standard-Notices-for-coverage-beginning-in-the-2021-plan-year.pdf.*

information collection request addresses the burden associated with the completion of the applicable CMS–855A by REHs in order to enroll in Medicare.

As part of this request, and as described in the supporting statement, we also seek approval for additional changes to the CMS–855A. These changes principally (though not exclusively) involve the collection of information related to the provider's ownership. *Form Number:* CMS–855A (OMB control number: 0938–0685); *Frequency:* On occasion; *Affected Public:* Business or other for-profits, not-for-profit institutions; *Number of Respondents:* 1,340; *Total Annual Responses:* 5,881; *Total Annual Hours:* 72,147. (For policy questions regarding this collection contact Frank Whelan at 410–786–1302.)

Dated: December 9, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–27166 Filed 12–14–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3728]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Collection of Conflict-of-Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by January 17, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information collection is 0910–0882. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Collection of Conflict-of-Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

OMB Control Number 0910–0882—Extension

Section 742(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379l(b)) allows FDA to conduct and support intramural training programs through fellowship and traineeship programs. Prospective participants in these programs must complete financial disclosure forms to determine if there is a conflict of interest that would preclude participation. These new forms provide FDA with information about financial investments and relationships from non-employee scientists who participate in FDA fellowship and traineeship programs. Participants in FDA fellowship and traineeship programs will be asked for certain information about financial interests and current relationships: (1) description of the financial interest; (2) the type of financial interest (*e.g.,* stocks, bonds, stock options); (3) if the financial interest is an employee benefit from prior employment; (4) value of financial interest; (5) who owns the financial interest (*e.g.,* self, spouse, minor children); (6) employment relationship with an FDA significantly regulated organization (SRO); and (7) service as a consultant to an FDA SRO, and/or proprietary interest(s) in one of more product(s) regulated by FDA, including a patent, trademark, copyright, or licensing agreement. The purpose of the financial information is for FDA to determine if there is a conflict of interest between the Fellow's or Trainee's financial and relationship interests and their activities at FDA. The collection of information is mandatory to participate in FDA's fellowship and traineeship programs.

In the **Federal Register** of July 7, 2022 (87 FR 40537), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Oak Ridge Institute for Science and Education Fellowship	500	1	500	1	500
Traineeship Program	500	1	500	1	500
Reagan Udall Fellowship at FDA	50	1	50	1	50
Total					1,050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: December 12, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27194 Filed 12–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1319]

Pulmonary Tuberculosis: Developing Drugs for Treatment; Draft 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 draft guidance for industry entitled ''Pulmonary Tuberculosis: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of new antibacterial drugs for the treatment of pulmonary tuberculosis (TB). This draft guidance does not address the development of drugs for latent TB infection or for extrapulmonary TB. This draft guidance revises and replaces the draft guidance for industry of the same name published on November 6, 2013.

DATES: Submit either electronic or written comments on the draft guidance by February 13, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–1319 for ''Pulmonary Tuberculosis: Developing Drugs for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of the draft 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 draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ramya Gopinath, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6154, Silver Spring, MD 20993–0002, 240–402–5328.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Pulmonary Tuberculosis: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the clinical development of investigational drugs for the treatment of pulmonary TB. Specifically, this draft guidance provides FDA's current recommendations regarding the overall development program and clinical trial designs for a new investigational drug or drugs to be used in combination with approved drugs or a new treatment regimen that includes one or more investigational drugs to support an indication for the treatment of pulmonary TB.

This draft guidance will revise and replace the draft guidance for industry of the same name issued November 6, 2013 (78 FR 66744). Since the 2013 final guidance was issued, there have been improvements in nonclinical models and further interest in streamlined clinical development programs as well as consideration for combination

regimens with treatment-shortening regimens with improved safety and efficacy. Thus, in this revised draft guidance more detail is provided for nonclinical models, early phase studies and trial design considerations, including the demonstration of efficacy using superiority or noninferiority (NI) trial designs. Additionally, updates are made to pediatric patients being included in trials, endpoint and safety considerations, and labeling. The Appendix is also updated with an example of an NI margin justification.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Pulmonary Tuberculosis: Developing Drugs for Treatment.'' 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 312 have been approved under OMB control numbers 0910–0014. 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 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft 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: December 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27186 Filed 12–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–N–1048; FDA–2012–N–0386; FDA–2019–N–0430; FDA–2019–N–5553; FDA–2021–N–0555; FDA–2013–N–0242; and FDA–2019–N–1517]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Medical Devices; Humanitarian Use Devices	0910–0332	10/31/2025
Tobacco Product Establishment Registration and Submission of Certain Health Information	0910–0650	10/31/2025
Generic Clearance for Quick Turnaround Testing of Communication Effectiveness	0910–0876	10/31/2025
Right to Try Act: Reporting Requirements	0910–0893	10/31/2025
Medical Device Labeling Regulations	0910–0485	11/30/2025
Current Good Manufacturing Practices for Positron Emission Tomography (PET) Drugs	0910–0667	11/30/2025
Abbreviated New Animal Drug Applications	0910–0669	11/30/2025

Dated: December 12, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27192 Filed 12–14–22; 8:45 am]

BILLING CODE 4164–01–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; Promoting Research on Music and Health: Phased Innovation Award for Music Interventions (R61/R33) Clinical Trial Optional.

Date: January 13, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, *shiyong.huang@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: December 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27216 Filed 12–14–22; 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 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: Center for Scientific Review Special Emphasis Panel; PA Panel: Oncology Fellowships.

Date: January 3, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, *sizemoren@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: December 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27219 Filed 12–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Assurance (Interinstitutional, Foreign, and Domestic) and Annual Report; Office of the Director (OD)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the Office of Laboratory Animal Welfare (OLAW) in the Office of Extramural Research will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Jane J. Na, Director, Division of Assurances, Office of Laboratory Animal Welfare, NIH, call (301) 496–7163 or email your request to *olawdoa@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Assurance (Interinstitutional, Foreign, and Domestic) and Annual Report, OMB #0925–0765, Expiration Date 11/30/2022, REINSTATEMENT WITH CHANGE, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The Office of Laboratory Welfare (OLAW) is responsible for the implementation, general administration, and interpretation of the Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals (Policy) as codified in 42 CFR 52.8. The PHS Policy implements the Health Research Extension Act (HREA) of 1985 (Pub. L. 99–158 as codified in 42 U.S.C. 289d). The PHS Policy requires entities that conduct research involving vertebrate animals using PHS funds to have an Institutional Animal Care and Use Committee (IACUC), provide assurance that requirements of the Policy are met, and submit an annual report. An institution's animal care and use program is described in the Animal Welfare Assurance (Assurance) document and sets forth institutional compliance with PHS Policy. The purpose of the Assurance (Interinstitutional, Foreign, and Domestic) and Annual Report is to provide OLAW with documentation to satisfy the requirements of the HREA, illustrate institutional adherence to PHS Policy, and enable OLAW to carry out its mission to ensure the humane care and use of animals in PHS-supported research, testing, and training, thereby contributing to the quality of PHS-supported activities.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 9,219.

ESTIMATED ANNUALIZED BURDEN HOURS

Document	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Annual burden hours
Interinstitutional Assurance for Foreign Site or Interinstitutional Assurance Triad for Foreign Site.	Foreign	46	1	30/60	23
Interinstitutional Assurance for Domestic Site or Interinstitutional Assurance Triad for Domestic Site.	Domestic	750	1	30/60	375
Foreign Assurance	Renewal and New	67	1	90/60	101
Foreign Annual Report to OLAW	All Foreign	335	1	1	335
Domestic Assurance	Renewal	215	1	30	6,450
Domestic Assurance	New	20	1	30	600
Domestic Annual Report to OLAW	All Domestic	890	1	90/60	1,335
Total			2,323		9,219

Dated: December 9, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–27240 Filed 12–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of 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 on Minority Health and Health Disparities.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of 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 on Minority Health and Health Disparities.

Date: February 6, 2023.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 7, 2023.

Open: 11:00 a.m. to 5:00 p.m.

Agenda: Opening Remarks, Administrative Matters, Director's Report, Presentations, and Other Business of the Council.

Place: National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul Cotton, Ph.D., RDN, Director, Office of Extramural Research Activities, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–402–1366, *paul.cotton@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: NIMHD: *https://www.nimhd.nih.gov/about/advisory-council/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27218 Filed 12–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Council.

The meeting will be open to the public through a virtual meeting. Individuals who plan to attend and 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 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 24–25, 2023.

Open Session: January 24, 2023, 12:00 p.m. to 5:00 p.m.

Agenda: Opening Remarks, Administrative Matters, NICHD Directors' Report, and other business of Council.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Open Session: January 25, 2023, 12:00 p.m. to 12:45 p.m.

Agenda: Other business of Council.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed Session: January 25, 2023, 12:45 p.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, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ms. Lisa Neal, Committee Management Officer, Committee Management Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6701B Rockledge Drive, Room 2208, Bethesda, MD 20892, (301) 204–1830, *lisa.neal@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.

Individuals will be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.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. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27217 Filed 12–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding to the Suicide Prevention Resource Center (SPRC) recipient funded in FY 2020 under Funding Opportunity Announcement SM–20–011.

SUMMARY: This is a notice of intent to award supplemental funding to the SPRC recipient funded in FY 2020 under Funding Opportunity Announcement SM–20–011. This is to inform the public that the SAMHSA is supporting an administrative supplement up to $5.429 million, which is consistent with the initial award for one-year to the University of Oklahoma Health Sciences Center. This recipient was funded in FY 2020 with a project end date of November 30, 2025. This supplement will provide support to the National Action Alliance for Suicide Prevention to conduct an evaluation project for populations at higher risk of suicide in support of the National Suicide Prevention Lifeline's 988 efforts. Additionally, SPRC will provide training and technical assistance to increase the capacity of existing 988 call centers to help Tribal callers and to build the capacity of Tribal crisis hotline services to qualify to join the 988 network.

This is not a formal request for application. Assistance will only be provided to the Suicide Prevention Resource Center (SPRC) recipient, the University of Oklahoma Health Sciences Center, based on the receipt of a satisfactory application and associated budget that is approved by a review group.

SUPPLEMENTARY INFORMATION: To better inform targeted messaging, SPRC will curate culturally appropriate best-practices to encourage populations at higher risk of suicide to contact 988 (and other crisis support services). This effort began in September 2022 and included six populations at high risk of suicide. This supplemental funding will expand the populations of focus to include other audiences at high risk of suicide, as well as ''influencers'' identified by respondents, to produce resources that influencers and/or peers can use in their role as trusted messengers. In addition, this will support the inclusion and engagement of more populations at risk, such as Asian Americans and individuals with disabilities. Additionally, to strengthen 988's overall capacity to meet the needs of Tribal communities engaging with 988, SPRC will:

A. Facilitate at least six online training webinars focused on 988 crisis centers building collaborative, sustainable relationships with Tribal nations and communities.

B. Facilitate a virtual community of learning for 988 crisis center directors and Tribal representatives.

C. Provide a spotlight report on the pilot of the Native and Strong Line in Washington.

D. Collaborate with SAMHSA's Mental Health Technology Transfer Centers (MHTTCs) and Tribal Training and Technical Assistance Center to develop an interactive online toolkit/resource guide, providing Tribal behavioral health resource and jurisdictional information by state, that can be used for referrals and linkage.

E. Collaborate with Vibrant to develop interactive online training for 988 crisis center staff to build capacity for culturally responsive and relevant care for Tribal callers in their regions.

F. Provide intensive technical assistance to Tribal 988 response grantees.

G. Foster partnerships among tribes, states, 911 centers, and first responders through direct technical assistance, policy academies, learning communities and state/regional convenings.

H. Coordinate meetings between SAMHSA, SAMHSA's MHTTC Network and Tribal Training and Technical Assistance Center, to provide updates on progress achieved for supplement-related goals and objectives and provide any gaps, challenges, barriers, and trends that have been identified.

Funding Opportunity Title: FY 2020 Suicide Prevention Resource Center SM–20–011.

Assistance Listing Number: 93.243.

Authority: Section 520A and 520C of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the University of Oklahoma Health Sciences Center which was funded in FY 2020 under the Suicide Prevention Resource Center Grant. The University of Oklahoma Health Sciences Center has special expertise completing the activities and needs assessments to understand the attitudes, knowledge, and beliefs regarding suicide of various groups and populations.

FOR FURTHER INFORMATION CONTACT: Brandon J. Johnson, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–1222; email: *brandon.johnson1@samhsa.hhs.gov.*

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2022–27201 Filed 12–14–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

[Document Identifier 0930–0092]

Agency Information Collection Request; 60-Day Public Comment Request; Correction

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a correction document in the **Federal Register** on December 7, 2022 concerning request for comments on Confidentiality of Substance Use Disorder Patient Records published November 22, 2022. The November 22, 2022 publication only listed the Department of Health and Human Services in the headings and contained an incorrect Document Identifier and contact for further information or submission of public comments. The December 7, 2022 document corrected those errors but contained an incorrect contact email address. This document corrects the contact email address. Comments on the information collect request must be received on or before January 23, 2023.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 22, 2022, at 87 FR 71341, in FR Doc. 2022–25343, the following corrections are made:

1. On page 71341, in the second column, correct the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESSES: Submit your comments to *Carlos.Graham@samhsa.hhs.gov* or by calling (240) 276–0361.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0930–0092, and project title for reference, to Carlos Graham, Reports Clearance Officer; email: *Carlos.Graham@samhsa.hhs.gov,* or call (240) 276–0361.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–27224 Filed 12–14–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2723–22; DHS Docket No. USCIS–2022–0011]

Trial Testing of Redesigned Naturalization Test for Naturalization Applications

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of trial testing of redesigned naturalization test.

SUMMARY: This notice announces that U.S. Citizenship and Immigration Services (USCIS) will conduct a nationwide trial of planned changes to the naturalization test. The naturalization test is comprised of the civics test that evaluates a knowledge and understanding of the fundamentals of U.S. history and of the principles and form of U.S. government, as well as tests that evaluate an individual's understanding of the English language. USCIS will conduct a trial of both a standardized English-speaking test as part of the requirement to demonstrate an understanding of the English language and a civics test with updated content and format. The trial testing does not include the reading or writing portions of the test. USCIS will conduct the trial with volunteer community-based organizations (CBOs) that work with immigrant English language learners and lawful permanent residents (LPRs) preparing for naturalization. Participating in the trial is completely voluntary for organizations and students, and any test taken during, or as part of, the trial will not affect any naturalization application that may be submitted to USCIS during the trial testing period. USCIS may use the results to support changes to the naturalization test which USCIS would also announce through a different **Federal Register** notice.

DATES: USCIS will conduct an initial virtual engagement to introduce the trial testing on January 12, 2023. USCIS will announce additional national engagements on the USCIS Citizenship Resource Center available at *https://www.uscis.gov/citizenship.* During these engagements, USCIS invites all interested parties to submit written data, views, comments, and arguments on all aspects of this trial testing. Comments may also be submitted to *natzredesign22@uscis.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Flores, Office of Citizenship, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–1940 (this is not a toll-free number) or email *natzredesign22@uscis.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under section 312(a)(1) of the Immigration and Nationality Act (''the Act''), 8 U.S.C. 1423(a)(1), most applicants seeking to naturalize must demonstrate an understanding of the English language including an ability to speak, read, and write words in ordinary usage (English language requirements). Additionally, under section 312(a)(2) of the Act, 8 U.S.C. 1423(a)(2), most applicants seeking to naturalize must demonstrate a knowledge and understanding of the fundamentals of U.S. history and of the principles and form of government in the United States (civics requirements). Under 8 CFR 312.1(c) and 312.2(c), an applicant for naturalization may satisfy these requirements by passing an examination (naturalization test). Certain applicants may be exempt from the English language requirements and civics requirements if they either meet specific age and time as LPR thresholds, or if they cannot comply with the English language requirements or the civics requirements, or both, because of a physical or developmental disability or mental impairment. *See* section 312 of the Act, 8 U.S.C. 1422.

In 1997, the U.S. Commission on Immigration Reform (the Commission) recommended that the former Immigration and Naturalization Service (INS) [1] standardize the naturalization testing process. The Commission recommended that the naturalization tests be revised to better determine if applicants have a meaningful knowledge of U.S. history and government and can communicate in English. Also in 1997, the Department of Justice (DOJ) began to reengineer the naturalization process. For naturalization testing, DOJ determined that the former INS should develop a uniform approach to testing, including standard and meaningful test content, standardized testing instruments and protocols, standard scoring, and standard levels of passing. The former INS began to redesign the testing process with a goal of developing a new process that would be uniform, fair, and meaningful. On December 26, 2000,

[1] On March 1, 2003, INS transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296). INS' adjudication functions involving naturalization and citizenship transferred to USCIS.

former INS issued ''Policy Memorandum No. 73: Standardization of Procedures for Testing Naturalization Applicants on English and Civics'' to guide the testing procedures for the English and civics components of the naturalization test and to announce plans to redesign the test.[2]

In 2003, USCIS began redesigning the current naturalization test, which was fully implemented in October 2009 and is the test currently administered to all naturalization applicants. *See* Current Testing Procedures below for description. At the time, USCIS standardized only the reading, writing, and civics tests. The English-speaking test was not standardized.[3]

On November 13, 2020, USCIS announced[4] a revised civics test.[5] This revised test required applicants to answer 12 out of 20 questions correctly (60%) in order to pass and had a bank of 125 questions from which to study. USCIS maintained the statutorily established special considerations for applicants who are 65 years old or older and have at least 20 years of lawful permanent resident status. These applicants were required to answer six out of ten questions correctly to pass. In February 2021, in response to the public's comments on the 2020 revised civics test and in keeping with the Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,[6] USCIS announced that it would revert to the previous 2008 version of the test.[7]

Current Testing Procedures

Currently, the speaking test is determined by the applicant's answers to questions typically asked by an officer during the naturalization eligibility interview. The questions asked are taken from the Form N–400, Application for Naturalization (Form N–400). During the interview, the officer reviews the applicant's responses to the questions in the Form N–400 for accuracy. The applicant may respond with simple words or phrases.[8]

There is also an overarching test to evaluate an applicant's ability to understand the English language. If the applicant understands and responds to questions, directions, or prompts during the naturalization interview, then the applicant demonstrates the ability to understand English. USCIS officers are required to repeat and rephrase questions until they are satisfied that the applicant either fully understands the question or does not understand English. The applicant is not required to provide a definition of a word or phrase found in Form N–400 to establish understanding of the English language.[9]

USCIS also evaluates a naturalization applicant's ability to understand the English language, specifically the ability to read and write words in ordinary usage in the English language, through a standardized test in which the applicant must read and write, respectively, one out of three items correctly to demonstrate the ability. An applicant passes the reading test if the applicant reads aloud one of the three sentences without extended pauses in a way that the applicant can convey the meaning of the sentence and the officer can understand the sentence. The applicant passes the writing test if the applicant can convey the meaning of one of the three sentences to the officer. The applicant can establish the ability to write even if the writing sample contains some grammatical, spelling, or capitalization errors; omitted short words that do not interfere with meaning; or numbers spelled out or written as digits.

An applicant for naturalization who is required to take the civics test must answer six of the ten civics questions correctly to pass the test. A USCIS system randomly selects the test questions, and an officer administers the test orally. The officer stops the test when the applicant correctly answers the minimum number of questions required to pass the test. Applicants pass the civics test when they provide a correct answer or provide an alternative phrasing of the correct answer for six of the ten questions from a test bank of 100 items.

Revising the Tests and Testing Procedures

USCIS is developing the trial test for the naturalization test redesign in response to feedback that USCIS received from stakeholders about the standardization and structure of the naturalization test. USCIS is conducting the trial as part of its effort to redesign the naturalization test to better ensure that the English-speaking part of the English Language requirements is standardized and sufficiently tests the ability to understand words in ordinary usage in the English language. Further, during the trial testing, USCIS would be assessing the understanding of English through the questions or prompts given with the speaking test instead of using the interview questions and Form N–400. However, in the trial testing, USCIS would not assess the understanding of English as part of the reading and writing portions of the naturalization test.

USCIS is not conducting a trial on the current English reading and writing tests because these tests are already standardized and USCIS believes they sufficiently test the ability to read and write words in ordinary usage in the English language, respectively. Furthermore, USCIS is conducting the trial to update the civics test content to reflect current best practices in test design and to redesign the civics test into a multiple-choice format. Once internal and external subject matter experts collect, evaluate, and consider all the information from the trial, USCIS will finalize a redesigned test and notify the public through a subsequent **Federal Register** Notice.

Naturalization Test Redesign Initiative

USCIS expects the Naturalization Test Redesign Initiative to take approximately two years and be ready for implementation by late 2024. The trial test period is expected to run for a five-month period in 2023. An integral part of the Naturalization Test Redesign Initiative is trial testing because it allows USCIS to determine the suitability of the new test content and use data to refine test content.

Before the trial test, USCIS will develop a bank of speaking and civics test items. USCIS expects to announce the call for contract bids to facilitate a Technical Advisory Group (TAG) by early 2023. The TAG will be comprised of external subject matter experts from the field of language acquisition, U.S.

[2] For a copy of the 2000 memo please see docket USCIS–2022–0011 on *regulations.gov.*

[3] USCIS worked to revise the speaking test as part of this initiative, but ultimately decided not to implement it for several reasons, including the anticipated cost to provide more translation services for naturalization interviews.

[4] *See* USCIS Announces a Revised Naturalization Civics Test (November 13, 2020), available at *https://www.uscis.gov/news/news-releases/uscis-announces-a-revised-naturalization-civics-test.*

[5] See also USCIS Memorandum, L. Francis Cissna, Revision of the Naturalization Civics Test (May 3, 2019), available at *https://www.uscis.gov/sites/default/files/document/memos/Revision_of_the_Naturalization_Civics_Test_D1_Signed_5-3-19.pdf.*

[6] *See* Executive Order 14012 (February 2, 2021), available at *https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02563.pdf.*

[7] *See* Policy Alert, Revising Guidance on Naturalization Civics Education Requirements (February 22, 2021), available at *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210222-CivicsTest.pdf.*

[8] *See* USCIS Policy Manual, Volume 12, Citizenship and Naturalization, Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS–PM E.2], available at *https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-2.*

[9] *See* Scoring Guidelines for the U.S. Naturalization Test available at *https://www.uscis.gov/sites/default/files/document/guides/Test_Scoring_Guidelines.pdf* (last updated December 14, 2021).

history and civics, and test development who will assist with the redesign initiative by reviewing trial test data and making recommendations as part of the process for finalizing the bank of speaking and civics test items. TAG members may make various recommendations about the tests to include language level and content. USCIS will make final determinations of which test items will be included in the final test bank.

After the trial test period, the TAG will review the data and provide recommendations on suitability of items and a review of educational materials for the new test. USCIS will use the recommendations and trial test data to develop the final test item banks which USCIS would announce through a **Federal Register** Notice.

Trial Testing

USCIS will conduct the trial with volunteer CBOs nationwide that work with adult English language learners and LPRs preparing for naturalization. Students at these organizations will be taking classes in English as a second language (ESL) or preparing for the naturalization test, or both. Volunteer CBOs must be nonprofits conducting ESL or citizenship education classes at the time of the trial. Adult students enrolled in classes may choose to participate or withdraw from the trial at any time.

Participating in the civics trial test and the speaking trial test is completely voluntary for organizations and students. The trial test is not part of an applicant's naturalization application. Therefore, tests taken during, or as part of, the trial test will not count as or against any of the two chances to pass the naturalization tests for any naturalization application that may be submitted to USCIS. Applicants who file Form N–400 will continue to take the current naturalization test and not the trial test.

Students will answer questions from three sections during the trial: Demographic Information, Speaking Test Items, and Civics Test Items. Volunteer adult students will answer the following four demographic questions with the help of their instructor:

- National Reporting System (NRS) ESL Level;
- Country of Origin;
- Primary Language Spoken at Home;
- Location; and
- Age Range.

USCIS will not collect personally identifiable information and will use the demographic information only for analysis.

Trial Speaking Test

As part of the speaking test trial, volunteer students will look at three color photographs, which they will be asked to describe. USCIS will continue to provide reasonable accommodations for applicants with disabilities. Applicants will respond to three color photographs randomly selected from a bank of approximately 70 images that directly correspond to an ordinary usage scenario, such as daily activities, the weather, or food. The bank of images will be developed by selecting photographs that clearly depict a scenario.

The content areas for the types of photographs that would be used during the speaking test have been derived from topics and situations an English language learner may encounter in everyday life. These content areas can be commonly found in adult ESL textbooks and adult language assessments.[10] These content areas are subject to change during the trial. After the trial, the image bank will be refined to a bank of approximately 40 images for implementation. Applicants will be scored on the ability to respond in English using vocabulary and simple phrases that are relevant to the image.

Trial Civics Test

During the trial, students will answer ten multiple-choice civics questions and select the one best answer from the four choices presented. USCIS decided to trial test multiple choice test questions to be consistent with the industry standard and best practice and increase standardization of test questions. Much of the trial civics content will be familiar to adult citizenship students and will be similar to the current civics test content. The trial test will also contain new test items based on a design framework that includes an external review by subject matter experts in the field of test development.[11] Applicants will read civics test items that will be displayed on a tablet and choose the one best response from the potential answers displayed.

Volunteer Community-Based Organization Selection

In 2023, USCIS will ask CBOs to contact the Office of Citizenship (OoC) if they wish to participate in the trial testing. CBOs must be active in providing ESL or citizenship classes, or both, during the trial testing and be designated as a nonprofit under Internal Revenue Code section 501(c)(3).

Instructors at the volunteer CBOs must be willing to incorporate USCIS-provided educational handouts on the trial test items in their curricula and attend virtual trainings and webinars on the trial protocols. Instructors at CBOs will ask their students to volunteer in the trial. Students must be enrolled in an ESL or citizenship class at the time of the trial. Students may choose to participate or not participate in the trial at any time.

USCIS will seek approximately 1,500 individuals who are enrolled in adult education classes as the sample size for the trial test consistent with the standard practices in the field of English as a second language (ESL) testing.[12] The trial test is tentatively scheduled to take place during a five-month period in 2023. USCIS will announce the request for volunteer CBOs on the USCIS Citizenship Resource Center available at *https://www.uscis.gov/citizenship* in the months preceding the trial test period. CBOs who are interested in volunteering for the trial test may request more information by emailing *natzredesign22@uscis.dhs.gov.*

Public Engagement

In advance of obtaining volunteers for the trial testing, USCIS will also conduct national engagements for interested CBOs. National engagements will be announced on the USCIS Citizenship Resource Center available at *https://www.uscis.gov/citizenship.* These engagements will include a review of each step taken in the process and progress of each step.

The first engagement to introduce the trial testing will be held virtually on January 12, 2023. Further, throughout the trial testing and redesign period, USCIS will conduct several in-person engagements in conjunction with scheduled adult citizenship education trainings and virtual stakeholder engagements every quarter.[13]

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[10] For example of content on ESL assessments, *see* ETS TOEIC *https://www.ets.org/s/toeic/pdf/examinee-handbook-for-toeic-listening-reading-test-updated.pdf* and Center for Applied Linguistics Best Plus 2.0 *https://www.cal.org/adultspeak/BPslideshow/bestplus.html.*

[11] USCIS is developing a statement of work to contract with external subject matter experts to form a Technical Advisory Group (TAG).

[12] American Educational Research Association, American Psychological Association, & The National Council on Measurement in Education. *Standards for Educational and Psychological Testing.* (Washington, DC: American Educational Research Association, 2014), pp 44–45 (Standards 3.8 & 3.9). *See https://www.testingstandards.net/uploads/7/6/6/4/76643089/standards_2014edition.pdf.*

[13] *See* USCIS Upcoming Teacher Trainings available at *https://www.uscis.gov/citizenship/resources-for-educational-programs/register-for-training.*

During these engagements, USCIS invites all interested parties to submit written data, views, comments, and arguments on all aspects of this trial testing. Comments may also be submitted to *natzredesign22@uscis.dhs.gov.* Comments must be submitted in English, or an English translation must be provided.

Ur M. Jaddou,

Director, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–27178 Filed 12–14–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[DOCKET NO. 6367–N–01]

Preview of the FY 2022 Family Unification Program; Notice of Funding Opportunity

AGENCY: Office of Public and Indian Housing, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: Through this notice, HUD is announcing the publication of a preview of the Fiscal Year (FY) 2022 Family Unification Program (FUP) Notice of Funding Opportunity (NOFO) in advance of publication on *Grants.gov*. HUD is making this preview available to allow interested applicants to review the preview of the NOFO, submit questions, and prepare applications. HUD intends to publish the NOFO and allow submission of applications in March of 2023.

FOR FURTHER INFORMATION CONTACT: Ryan E. Jones, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–8000; telephone number 202–402–2677 (this is not a toll-free number); email *2022FUPNOFO@hud.gov*. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*.

SUPPLEMENTARY INFORMATION: HUD is publishing a preview of the FY 2022 FUP NOFO to give interested applicants time to prepare their applications prior to the opening of the application period. HUD expects that this preview will be available for approximately 90 days before HUD publishes the official NOFO on *Grants.gov* and begins to take applications. During this preview, the FY 2022 FUP NOFO preview is available on HUD's website at the following URL: *https://www.hud.gov/grants*.

This NOFO preview is subject to change. While HUD does not intend to make substantive changes at this point, applicants should consider the NOFO published on *Grants.gov* to be the official version.

HUD will not accept applications during the preview period. However, during this preview, interested applicants may submit questions on the NOFO preview to the following email address: *2022FUPNOFO@hud.gov* (see Sections VII and VIII.3. of the NOFO preview). Interested applicants may also conduct the required registration activities for the System for Award Management (SAM), Unique Entity Identifier (UEI), and *Grants.gov* (see Section IV.C. of the NOFO preview).

HUD strongly encourages interested applicants to begin working with their partnering public child welfare agency (PCWA) and Continuum of Care (CoC) to draft their Memorandum of Understanding (MOU) during the preview period. Please note that while interested applicants may work on their MOUs during the preview period, the NOFO requires that the MOU must be signed between the date the NOFO is published on *Grants.gov* and the application deadline.

HUD anticipates that the FY 2022 FUP NOFO will be published on *Grants.gov* in March 2023. The publication of the FY 2022 FUP NOFO on *Grants.gov* will signal the opening of the application period. The application period will be open for 30 days. Applications must be submitted through *Grants.gov*.

HUD will not accept requests for a waiver of electronic submission requirements during the preview period. Such requests may only be submitted once the NOFO has been published on *Grants.gov* (see Section IV.A. of the NOFO preview).

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2022–27109 Filed 12–14–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–45; OMB Control No. 2502–0016]

60-Day Notice of Proposed Information Collection: Final Endorsement of Credit Instrument

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 60 days of public comment.

DATES: *Comments Due Date:* February 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, 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) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, 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. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

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.

A. Overview of Information Collection

Title of Information Collection: Final Endorsement of Credit Instrument.

OMB Approval Number: 2502–0016.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–92023.

Description of the need for the information and proposed use: This information collected is being discontinued. The form HUD–92023, is being transferred to OMB 2502–0598.

Respondents: Business or other for-profit, Not-for-profit institutions, contractors, mortgagors/borrowers, and mortgagees/lenders.

Estimated Number of Respondents: 1,472.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 1,472.

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.

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.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2022–27214 Filed 12–14–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23.WB12.C25A1.00; OMB Control Number 1028–0116]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Alaska Beak Deformity Observations

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 17, 2023.

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. Written comments may also be submitted by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0116 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Colleen Handel by email at *cmhandel@usgs.gov,* or by telephone at 907–786–7181. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 11, 2022 (87 FR 61355). One comment was received but it did not address the Information Collection. No action was taken.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: As part of the USGS Ecosystems Mission Area mission to assess the status and trends of the Nation's biological resources, the Alaska Science Center Landbird program conducts research on avian populations within Alaska. Beginning in the late 1990s, an outbreak of beak deformities in Black-capped Chickadees emerged in southcentral Alaska. USGS scientists launched a study to understand the scope of this problem and its effect on wild birds. Since that time, researchers

have gathered important information about the deformities, but their cause still remains unknown. Members of the public provide observation reports of birds with deformities from around Alaska and other regions of North America. These reports are very important in that they allow researchers to determine the geographical distribution and species affected. Data collection over such a large and remote area would not be possible without the public's assistance.

Title of Collection: Alaska Beak Deformity Observations.

OMB Control Number: 1028–0116.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: individuals/households.

Total Estimated Number of Annual Respondents: 250.

Total Estimated Number of Annual Responses: 250.

Estimated Completion Time per Response: 5 minutes to read the instructions and 10 minutes to complete the response form.

Total Estimated Number of Annual Burden Hours: 63.

Respondent's Obligation: Voluntary.

Frequency of Collection: on occasion.

Total Estimated Annual Nonhour Burden Cost: none.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Christian Zimmerman,

USGS Alaska Science Center Director.

[FR Doc. 2022–27177 Filed 12–14–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GR23MN00BHA1500; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Stakeholder Engagement for Natural Hazards Investigations in the Caribbean

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing an information collection to publicly announce a request for information regarding natural-hazards resources and experts in U.S. Caribbean territories and other Caribbean nations.

DATES: Interested persons are invited to submit comments on or before February 13, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Donya Frank-Gilchrist by email at *dfrank-gilchrist@usgs.gov,* or by telephone at 727–502–8000. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We seek to connect with natural-hazards experts in the Caribbean to discuss the feasibility for the USGS to conduct natural-hazards research in the region in collaboration with U.S. territories and international partners. Natural hazards impacting U.S. Caribbean territories are driven by regional-scale processes which are coupled with those of neighboring international countries. Multi-hazards such as coastal storms and related hazards including flooding, sea level rise, freshwater scarcity, and coral reef degradation, should be investigated at a regional scale to better understand the processes and develop accurate numerical models to reduce loss of life and property. We will discuss primary natural hazards of concern with local experts to learn about their mitigation efforts and discuss areas of overlapping interests in which we may be able to collaborate. A final report will document feasible engagement strategies, key takeaways, and lessons learned. A database will be compiled of hazards experts and resources in each country to facilitate future potential collaborations.

Title of Collection: Stakeholder Engagement for Natural Hazards Investigations in the Caribbean.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: universities, natural resource and disaster relief managers, community leaders, natural hazards experts, disaster and risk professionals.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 2 minutes.

Total Estimated Number of Annual Burden Hours: 3.3 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq*).

Nathaniel Plant,

Center Director, USGS St. Petersburg Coastal and Marine Science Center.

[FR Doc. 2022–27176 Filed 12–14–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035007; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology (PMAE), Harvard University has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The associated funerary objects were removed from Tuscaloosa County, Alabama.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after January 17, 2023.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

In 1906, two associated funerary objects were removed from the Moundville (01–TU–0500) site in Tuscaloosa County, AL, by C.B. Moore. The two objects are one complete ceramic bottle from the Field west of Mound R and one complete ceramic cup from the Field south of Mound D. These objects were donated to the PMAE in 1907 by Moore.

Museum records do not indicate that human remains from excavations at Moundville were sent to the PMAE; however, in 1907, Moore reported that he sent human remains to the United States Army Medical Museum (AMM) and the Academy of Natural Sciences of Philadelphia. Additional human remains were likely sent to other institutions by Moore or transferred between institutions at a later date. Twenty-eight human remains sent to AMM were reported in a Notice of Inventory Completion published in the **Federal Register** on October 17, 2017, by the National Museum of Health and Medicine. At least two human remains sent to the Academy of Natural Sciences of Philadelphia were reported in a NAGRPA inventory by the University of Pennsylvania Museum of Archaeology and Anthropology.

The PMAE does not have a record of human remains from Moundville being at PMAE; however, based on museum documentation (including recently received from other museums), field notes, and subsequent review of consultation, historical, and archeological evidence, the PMAE believes there is evidence to reasonably document human remains held in a museum on or after November 16, 1990 as associated with the aforementioned funerary objects.

Cultural Affiliation

The associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, biological information, geographical information, historical information, kinship, linguistics, oral tradition, and other relevant information and/or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the present-day Muskogean speaking Tribes: Alabama-Coushatta Tribe of Texas (*previously* listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Seminole Tribe of Florida (*previously* listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood, & Tampa Reservations)); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after January 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–27181 Filed 12–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035006; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Oregon Historical Society, Portland, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Oregon Historical Society (OHS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Lincoln County, OR.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 17, 2023.

ADDRESSES: Nicole Yasuhara, Oregon Historical Society, 1200 SW Park Avenue, Portland, OR 97205, telephone (503) 306–5238, email *Nicole.Yasuhara@ohs.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the OHS. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the OHS.

Description

Human remains representing, at minimum, one individual were removed from Lincoln County, OR. Based on newspaper reporting and first-hand accounts, in January of 1972, David Berry, Laura [Berry] Bernard, and George Thompson uncovered and removed skeletal remains and associated funerary objects from the Oregon Coast, near the mouth of the Salmon River, south of Cascade Head, in Lincoln County. Shortly afterward, the collection was transferred to the OHS for identification, and it remained at the OHS—neither accessioned nor catalogued—until its discovery in 2018. No known individual was identified. The eight associated funerary objects are one pipe bowl featuring figure of mustached, turbaned male head; one 10″ rusted blade, detached from handle; one wooden handle, likely associated with blade; one lot of buttons (three black, two large white, and five small white); one lot of ceramics (including one mostly intact dish, five larger pieces comprised of several sherds glued together, and 27 sherds); one small, clear glass fragment; one lot of arrowhead and arrowhead fragments; and one lot of various materials (includes several small bags of various materials (possibly sand, rocks, wood, etc.)).

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the OHS has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Confederated Tribes of Siletz Indians of Oregon (*previously* listed as Confederated Tribes of the Siletz Reservation).

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 17, 2023. If competing requests for repatriation are received, the OHS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The OHS is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: December 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–27180 Filed 12–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035008; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology (PMAE), Harvard University intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian

organizations in this notice. The cultural items were removed from Hale and Tuscaloosa Counties, Alabama.

DATES: Repatriation of the cultural items in this notice may occur on or after January 17, 2023.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

The eight cultural items were removed from the Moundville archeological site in Hale and Tuscaloosa Counties, AL. The eight unassociated funerary objects are two discoidal stones, one bird-head effigy, three stone effigy pipes, one incised palette, and one lot of shell beads. The PMAE does not have a record of human remains from Moundville being at PMAE.

On an unknown date, Professor N.T. Lupton collected a discoidal stone from a pot in a mound in Carthage, AL. The PMAE does not have a record of the associated pot being at PMAE. The Moundville archeological site was referred to as ''the Carthage group'' through the second half of the nineteenth century. This funerary object was donated by Professor N.T. Lupton to the PMAE in October 1877.

On an unknown date in or around 1860, O.T. Prince collected one bird-head effigy from near Moundville, AL. On an unknown date in or around 1860, a possibly enslaved worker of O.T. Prince or O.T. Prince collected three stone effigy pipes, found while digging a ditch near Mound M of the Moundville site, AL. On an unknown date, the family of O.T. Prince collected one engraved stone disc (''The Willoughby Disc'') from the base of a small mound near Moundville, Carthage, AL. On an unknown date, the family of O.T. Prince collected one discoidal stone and one lot of shell beads from near Moundville, Carthage, AL. O.T. Prince was the landowner of a portion of the Moundville-site property from 1857–1862. Given this, it is likely that these localities refer specifically to the mounds or fields between mounds on the Prince estate at the Moundville site. On an unknown date, these seven unassociated funerary objects were acquired by F.E. Hyde and Charles P. Bowditch and donated by Mr. Hyde and Mr. Bowditch to the PMAE on an unknown date in 1896.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, biological information, geographical information, historical information, kinship, linguistics, oral tradition, and other relevant information and/or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The eight 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.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the present-day Muskogean speaking Tribes: Alabama-Coushatta Tribe of Texas (*previously* listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Seminole Tribe of Florida (*previously* listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood, & Tampa Reservations)); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 17, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–27182 Filed 12–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035009; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Alabama Department of Transportation, Montgomery, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Alabama Department of Transportation (ALDOT) 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 ALDOT. 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 ALDOT at the address in this notice by January 17, 2023.

ADDRESSES: William B. Turner, Alabama Department of Transportation, 1409 Coliseum Blvd., Montgomery, AL 36110, telephone (334) 242–6144, email *turnerw@dot.state.al.us.*

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 Alabama Department of Transportation, Montgomery, AL. The human remains were removed from Baldwin County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Alabama Department of Transportation and the University of Alabama professional staff in consultation with representatives of The Choctaw Nation of Oklahoma.

History and Description of the Remains

During the summer of 1974, human remains representing, at minimum, 10 individuals were removed from the D'Olive Creek site, 1Ba196, in Baldwin County, AL. Burials were removed by University of Alabama archeologists under contract to ALDOT during Phase III Data Recovery excavations conducted prior to construction of Interstate 10 across Mobile Bay, near the city of Daphne. In 1975, the collection was obtained by University of Alabama in 1975, and in 2022, ALDOT assumed control. No known individuals were identified. No associated funerary objects were recovered.

The D'Olive Creek site, 1Ba196, is a shell midden occupied during the Late Woodland and Mississippian periods. Some evidence of European contact is indicated by possible French trade artifacts. Cultural affiliation of these human remains with The Choctaw Nation of Oklahoma is based on the location of their discovery and the time periods represented by the artifacts recovered from the site.

Determinations Made by the Alabama Department of Transportation

Officials of the Alabama Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 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 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 request transfer of control of these human remains should submit a written request with information in support of the request to William B. Turner, Alabama Department of Transportation, 1409 Coliseum Blvd., Montgomery, AL 36110, telephone (334) 242–6144, email *turnerw@ dot.state.al.us,* by January 17, 2023. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Choctaw Nation of Oklahoma may proceed.

The Alabama Department of Transportation is responsible for notifying The Choctaw Nation of Oklahoma that this notice has been published.

Dated: December 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–27179 Filed 12–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–998]

Bulk Manufacturer of Controlled Substances Application: Stepan Company; Correction

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice; correction.

SUMMARY: The Drug Enforcement Administration (DEA) published a document in the **Federal Register** on August 9, 2022, concerning an application for an Importer of Controlled Substances. The document contained an incorrect drug schedule for coca leaves.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on August 9, 2022, in FR Doc No: 2022–16984, on page 48510 (87 FR 48510), in the third column, correct the drug schedule for Coca Leaves to read schedule II as follows:

Controlled substance	Drug code	Schedule
Coca Leaves	9040	II

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–26928 Filed 12–14–22; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; 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: Site visit review of a Materials Innovation Platform on BioPolymers, Automated Cellular Infrastructure, Flow, and Integrated Chemistry (BioPACIFIC MIP) by the NSF Division of Materials Research (DMR) (#1203).

Date and Time: January 9, 2023; 8:00 a.m.–6:00 p.m. PT, January 10, 2023; 8:00 a.m.–3:00 p.m. PT.

Place: University of California (Los Angeles), 590 Westwood Plaza, Los Angeles, CA 90095.

Type of Meeting: Part-open.

Contact Person: Z. Charles Ying, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Telephone (703) 292–8428.

Purpose of Meeting: Site visit to provide advice and recommendations concerning further support of the BioPACIFIC at University of California.

Agenda

Monday, January 9, 2023

8:00 a.m.–8:30 a.m. Closed—Executive Session

8:30 a.m.–11:30 a.m. Open—Review of GlycoMIP

11:30 a.m.–12:30 p.m. Closed—Executive Session

12:30 p.m.–4:00 p.m. Open—Review of GlycoMIP
4:00 p.m.–6:00 p.m. Closed—Executive Session

Tuesday, January 10, 2023

8:00 a.m.–3:00 p.m. Closed—Executive Session

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: December 12, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–27189 Filed 12–14–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–75 and CP2023–76; MC2023–76 and CP2023–77; MC2023–77 and CP2023–78]

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:* December 19, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
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).:* MC2023–75 and CP2023–76; *Filing Title:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 19, 2022.

2. *Docket No(s).:* MC2023–76 and CP2023–77; *Filing Title:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 6 to Competitive Product List and Notice of Filing Materials Filed Under Seal; *Filing Acceptance Date:* December 9, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 19, 2022.

3. *Docket No(s).:* MC2023–77 and CP2023–78; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 96 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 9, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 19, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–27227 Filed 12–14–22; 8:45 am]

BILLING CODE 7710–FW–P

[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).

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service 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:* December 15, 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 December 9, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 96 to Competitive Product List*. Documents

are available at *www.prc.gov,* Docket Nos. MC2023–77, CP2023–78.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27170 Filed 12–14–22; 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:* December 15, 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 December 6, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 772 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–74, CP2023–74.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27169 Filed 12–14–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96472; File No. SR–PEARL–2022–53]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

December 9, 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 November 30, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Fee Schedule to (i) adopt a reduced fee for executions of Midpoint Peg Orders [3] that remove liquidity and execute at the midpoint of the Protected NBBO (''PBBO''); [4] (ii) adopt a new Liquidity Code and associated fee to the Liquidity Indicator Codes and Associated Fees table for a Midpoint Peg Order; and (iii) update the Standard Rates table to include the new Liquidity Indicator Code in the Removing Liquidity column.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading, and the Exchange currently represents approximately 1.06% of the overall market share.[5]

Midpoint Peg Orders

The Exchange currently charges a standard fee of $0.0029 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange in all Tapes (such orders, ''Removed Liquidity''). The Exchange now proposes to adopt a reduced fee of $0.00265 per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 that execute at the midpoint of the PBBO and remove liquidity from the Exchange in all Tapes. As proposed, executions of Midpoint Peg Orders in securities priced below $1.00 per share that execute at the midpoint of the PBBO and remove liquidity from the Exchange will be charged a fee of 0.20% of the total dollar of the transaction, which is the same fee that is currently charged for all such executions.

The purpose of reducing the fee for executions of Midpoint Peg Orders is to incentivize Equity Members [6] (or ''Members'') to submit additional liquidity-removing orders designed to execute at the midpoint to the Exchange, as the cost of such executions would be lower than it is today. In turn, the Exchange believes the submission of additional Midpoint Peg Orders would encourage firms that post liquidity at the midpoint to submit additional liquidity-providing orders designed to execute at the midpoint to the Exchange, as such orders would have a greater chance of being executed as a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes to the midpoint of the PBBO. *See* Exchange Rule 2614(a)(3).

[4] With respect to the trading of equity securities, the term ''Protected NBB'' or ''PBB'' shall mean the national best bid that is a Protected Quotation, the term ''Protected NBO'' or ''PBO'' shall mean the national best offer that is a Protected Quotation, and the term ''Protected NBBO'' or ''PBBO'' shall mean the national best bid and offer that is a Protected Quotation. *See* Exchange Rule 1901.

[5] *See* MIAX's ''The market at a glance/Equities/MTD AVERAGE'', available at *https://www.miaxoptions.com/* (Data as of 11/1/2022–11/18/2022).

[6] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

result of additional contra-side liquidity-removing Midpoint Peg Orders to interact with. Thus, the Exchange's proposal to reduce the fee for executions of Midpoint Peg Orders is designed to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue.

The Exchange proposes to update the Liquidity Indicator Code and Associated Fees Table as follows:

• Add new liquidity indicator code Rp, Removes Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Rp would be assessed a fee of $0.00265 per share in securities priced at or above $1.00 and 0.20% of the transaction's dollar value in securities priced below $1.00.

The Exchange also proposes to add the above liquidity indicator code to the Standard Rates table. Specifically, liquidity indicator code Rp would be added to the ''Remove Liquidity'' column.

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on December 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.[10] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1.06% of the overall market share. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Members and market participants.

The Exchange believes that its proposal to charge a reduced fee for Midpoint Peg Orders that remove liquidity and execute at the midpoint is reasonable, equitable, and not unfairly discriminatory. Specifically, the Exchange believes such proposal is reasonable, as it is reasonably designed to incentivize Members to submit additional Midpoint Peg Orders to the Exchange, which, in turn, the Exchange believes would encourage firms that post midpoint liquidity to submit additional liquidity-adding orders designed to execute at the midpoint to the Exchange in order to interact with such Midpoint Peg Orders, as described above. Thus, the Exchange believes the proposal reflects a reasonable attempt to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue, particularly as the Exchange believes the proposed reduction in the fee for executions of Midpoint Peg Orders (*i.e.,* $0.00025 per share lower than the standard fee for Removed Liquidity) is not excessive and is reasonably related to the market quality benefits it is intended to achieve. The Exchange also believes that the proposed fee for executions of Midpoint Peg Orders is equitable and not unfairly discriminatory, as such fee would be charged uniformly to all executions of such orders for all Members.

New Liquidity Indicator Code

The Exchange believes its proposal to add new liquidity indicator code ''Rp'' to the Liquidity Indicator Codes and Associated Fees table and to add liquidity indicator code ''Rp'' to the ''Removing Liquidity'' column of the Standard Rates table, is reasonable and equitable because it will apply equally to all Members of the Exchange that submit Midpoint Peg Orders that remove liquidity at the midpoint. This liquidity indicator code would be returned on the real-time trade reports sent to the Member that submitted the order. The use of liquidity indicator codes is not unique to the Exchange as liquidity indicator codes are currently utilized and described in the fee schedules of other equity exchanges.[12] Further, the Exchange's proposed fee of

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C 78f(b)(5).

[10] *See supra* note 5.

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[12] *See* the fee schedule of MEMX LLC (''MEMX'') available on their public website at *https://info.memxtrading.com/fee-schedule/;* and the fee schedule of the Investors Exchange LLC (''IEX'') available on their public website at *https://exchange.iex.io/resources/trading/fee-schedule/.*

$0.00265 is competitive with other exchanges that provide a similar pricing incentive.[13]

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed change would encourage Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [14]

Intramarket Competition

The Exchange believes that the proposal would incentivize Members to submit additional order flow, including liquidity-adding and liquidity-removing orders designed to execute at the midpoint, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed reduced fee for executions of Midpoint Peg Orders that remove liquidity at the midpoint from the Exchange will apply to all such executions for all Members on the Exchange. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 17% of the total market share of executed volume of equities trading.[15] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Midpoint Peg Orders, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to encourage additional order flow to the Exchange through a reduced fee for executions of Midpoint Peg Orders. The proposed fee for executions of Midpoint Peg Orders that remove liquidity at the midpoint from the Exchange is competitive with fees charged by at least one other exchange that offers a similar pricing incentive.[16] Accordingly, the Exchange believes its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. circuit stated: ''[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 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 possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[18] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[19] and Rule

[13] *See* fee code ''Rm'' of the MEMX fee schedule that assesses a $0.0027 fee for removed volume from the MEMX Book, Midpoint Peg, available on their public website at *https://info.memxtrading.com/fee-schedule/*.

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[15] *See supra* note 5.

[16] *See supra* note 13.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

19b–4(f)(2)[20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

☐ Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

☐ Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–53 on the subject line.

Paper Comments

☐ Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–53. 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 submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PEARL–2022–53 and should be submitted on or before January 5, 2023. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

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[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96471; File No. SR–MEMX–2022–33]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

December 9, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2022, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on December 1, 2022. The text of the proposed rule change is provided in Exhibit 5.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) modify the Liquidity Provision Tiers; (ii) modify the Displayed Liquidity Incentive ("DLI") Tiers; (iii) modify the NBBO Setter Tier to become the NBBO Setter/Joiner Tiers; (iv) reduce the rebates for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange (such orders, "Added Non-Displayed Volume"); (v) modify the Non-Display Add Tiers; (vi) adopt the Sub-Dollar Rebate Tier; (vii) add a note to the Fee Schedule stating that to the extent a single execution qualifies for one or more additive rebates, the maximum combined rebate per share provided by the Exchange shall be $0.0036; and (viii) eliminate the Step-Up Additive Rebate, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities

[4] Market share percentage calculated as of November 30, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the rebates and required criteria under Liquidity Provision Tiers 1, 3 and 5, and keeping Liquidity Provision Tiers 2 and 4 intact with no changes, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) a Displayed ADAV[6] that is equal to or greater than 0.40% of the TCV;[7] or (2) a Remove ADV[8] that is equal to or greater than 0.20% of the TCV and a Step-Up ADAV[9] from June 2022 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to modify Liquidity Provision Tier 1 such that the Exchange would provide an enhanced rebate of $0.0034 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Step-Up ADAV from November 2022 that is equal to or greater than 0.10% of the TCV.[10] Thus, such proposed changes would increase the rebate for executions of Added Displayed Volume by $0.0001 per share and keep the first of the two existing alternative criteria (based on an overall Displayed ADAV threshold) intact, eliminate the second of the two existing alternative criteria (based on a Remove ADV threshold and a Step-Up ADAV from June 2022 threshold), and add a new second alternative criteria (based on an overall ADAV threshold and a Step-Up ADAV from November 2022 threshold). The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under this tier.

Second, with respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of $0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.12% of the TCV; or (2) a Step-Up ADAV from April 2022 that is equal to or greater than 0.04% of the TCV; or (3) a Step-Up Non-Displayed ADAV[11] from April 2022 that is equal to or greater than 2,000,000 shares. The Exchange now proposes to modify Liquidity Provision Tier 3 such that the Exchange would provide an enhanced rebate of $0.0030 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) an ADAV that is equal to or greater than 15,000,000 shares.[12] Thus, such proposed changes would increase the rebate for executions of Added Displayed Volume by $0.0001 per share and would increase the overall ADAV threshold that is expressed as a percentage of the TCV in the first of the three existing alternative criteria, eliminate the second and third of the three existing alternative criteria (based on a Step-Up ADAV from April 2022 threshold and a Step-Up Non-Displayed ADAV from April 2022 threshold), and add a new alternative criteria based on an overall ADAV threshold that is expressed as a number of shares. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

Third, with respect to Liquidity Provision Tier 5, the Exchange currently provides an enhanced rebate of $0.0026 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Step-Up Displayed ADAV[13] from April 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV[14] that is equal to or greater than 1,000,000 shares. The Exchange now proposes to modify Liquidity Provision Tier 5 such that the Exchange would provide an enhanced rebate of $0.0025 per share for executions of Added Displayed Volume for Members that qualify for such tier by

[5] *Id.*

[6] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[7] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[8] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis, and ''Remove ADV'' means ADV with respect to orders that remove liquidity.

[9] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[10] The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of B1, D1 or J1, as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

[11] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including Midpoint Peg orders), and ''Step-Up Non-Displayed ADAV'' means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV.

[12] The pricing for Liquidity Provision Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 3'' with a Fee Code of B3, D3 or J3, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[13] As set forth on the Fee Schedule, ''Step-Up Displayed ADAV'' means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

[14] As set forth on the Fee Schedule, ''Midpoint ADAV'' means ADAV with respect to Midpoint Peg orders.

achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Midpoint ADAV[15] that is equal to or greater than 1,000,000 shares.[16] Thus, such proposed changes would decrease the rebate for executions of Added Displayed Volume by $0.0001 per share and would eliminate the second of the three existing alternative criteria (based on a Step-Up Displayed ADAV from April 2022 threshold). The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

As noted above, Liquidity Provision Tiers 2 and 4 would remain intact with no changes under this proposal.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized, updated to reference more recent baseline months with respect to the applicable Step-Up ADAV thresholds, and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

DLI Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (*i.e.,* through the applicable quoting requirement[17]) in a broad base of securities (*i.e.,* through the applicable securities requirements[18]), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders.[19] Now, the Exchange proposes to modify DLI Tiers 1 and 2 by reducing the rebates for executions of Added Displayed Volume under such tiers and modifying the required criteria under DLI Tier 1.

Currently, a Member qualifies for DLI Tier 1 by achieving an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month. The Exchange now proposes to modify the required criteria under DLI Tier 1 such that a Member would now qualify for such tier by achieving: (1) an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV that is equal to or greater than 0.05% of the TCV. Thus, such proposed change would add an overall ADAV threshold into the required criteria, which is intended to encourage Members to maintain or increase their overall order flow that adds liquidity to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants, in addition to the existing quoting requirement designed to promote price discovery and market quality in a broad base of securities on the Exchange.

The Exchange also proposes to reduce the rebates for executions of Added Displayed Volume under DLI Tiers 1 and 2. Currently, the Exchange provides enhanced rebates of $0.0032 per share under DLI Tier 1 and $0.0029 per share under DLI Tier 2 for a qualifying Member's executions of Added Displayed Volume. Now, the Exchange proposes to reduce such rebate provided under DLI Tier 1 to $0.0031 per share and reduce such rebate provided under DLI Tier 2 to $0.0028 per share.[20] The Exchange believes that the proposed reduction of such rebates (*i.e.,* by $0.0001 per share in each case) represents a modest reduction in each case and that each of the proposed rebates under DLI Tiers 1 and 2 remains commensurate with the required criteria under each such tier. The purpose of reducing the rebates for executions of Added Displayed Volume provided under DLI Tiers 1 and 2, as proposed, is for business and competitive reasons, as the Exchange believes the reduction of such rebates would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below $1.00 per share.

NBBO Setter/Joiner Tiers

The Exchange currently offers the NBBO Setter Tier under which a Member may receive an additive rebate of $0.0003 per share for executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, "Setter Volume") by achieving an ADAV with respect to orders with Fee Code B[21] that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to modify the NBBO Setter Tier to become the NBBO Setter/Joiner Tiers by renaming the existing NBBO Setter Tier as NBBO Setter/Joiner Tier 1, increasing the additive rebate under such tier, making

[15] As set forth on the Fee Schedule, "Midpoint ADAV" means ADAV with respect to Midpoint Peg orders.

[16] The pricing for Liquidity Provision Tier 5 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 5" with a Fee Code of B5, D5 or J5, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[17] As set forth on the Fee Schedule, the term "quoting requirement" means the requirement that a Member's NBBO Time be at least 25%, and the term "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers ("MPIDs") has a displayed order of at least one round lot at the national best bid or the national best offer.

[18] As set forth on the Fee Schedule, the term "securities requirement" means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

[19] *See* the Exchange's Fee Schedule (available at *https://info.memxtrading.com/fee-schedule/*) for additional details regarding the Exchange's DLI Tiers. *See also* Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR–MEMX–2021–07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

[20] The pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" with a Fee Code of Bq1, Bq1 or Jq1, as applicable, and the pricing for DLI Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 2" with a Fee Code of Bq2, Dq2 or Jq2, as applicable.

[21] The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

the additive rebate under such tier also applicable to a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish a new best bid or offer (''BBO'') on the Exchange that matches the NBBO first established on an away market (such orders, ''Joiner Volume''), and establishing an NBBO Setter/Joiner Tier 2.[22] The additive rebate under each of the NBBO Setter/Joiner Tiers will apply to a qualifying Member's executions of Setter Volume, as it does today with respect to the NBBO Setter Tier, as well as Joiner Volume, and the Exchange will indicate this in the note under the NBBO Setter/Joiner Tiers pricing table on the Fee Schedule.

First, with respect to NBBO Setter/Joiner Tier 1, the Exchange proposes to increase the additive rebate from $0.0003 per share to $0.0004 per share for a qualifying Member's executions of Setter Volume and Joiner Volume.[23] As noted above, the additive rebate under such tier will now be provided in addition to the otherwise applicable rebate for a qualifying Member's executions of Setter Volume and Joiner Volume, which the Exchange will indicate in the note under the NBBO Setter/Joiner Tier pricing table on the Fee Schedule. The Exchange is not proposing to modify the required criteria under such tier.

Second, the Exchange proposes to establish the NBBO Setter/Joiner Tier 2 under which the Exchange will provide an additive rebate of $0.0003 per share for executions of Setter Volume and Joiner Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.05% of the TCV and a Displayed ADAV with respect to orders with Fee Code B or J[24] that is equal to or greater than 40% of the Member's Displayed ADAV with respect to orders with Fee Code B, D or J.[25] The additive rebate under such tier will not apply to executions of orders in securities priced below $1.00 per share. The Exchange notes that the inclusion in the required criteria of a threshold based on the amount of a Member's orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market (*i.e.,* order with Fee Code B or J), as a percentage of all such Member's orders that add displayed liquidity to the Exchange (*i.e.,* orders with Fee Code B, D or J), is intended to incentivize Members to submit such aggressively priced displayed liquidity to the Exchange.

The purpose of making the additive rebate under the NBBO Setter/Joiner Tiers applicable to a qualifying Member's executions of Joiner Volume (in addition to Setter Volume) is, like the original purpose of the NBBO Setter Tier, to attract aggressively priced displayed liquidity to the Exchange. Specifically, the Exchange believes that such change will encourage the submission of orders that establish a new BBO on the Exchange that matches the NBBO first established on an away market, both in order to receive the additive rebate on such executions under each of the NBBO Setter/Joiner Tiers and, with respect to Members seeking to qualify for NBBO Setter/Joiner Tier 2, to meet the required criteria under such tier, and the Exchange believes that the resulting increased submission of such aggressively priced displayed liquidity would enhance market quality by increasing execution opportunities, tightening spreads, and promoting price discovery on the Exchange. Additionally, the Exchange believes that the additive rebate for executions of Setter Volume and Joiner Volume provided under each of the NBBO Setter/Joiner Tiers is commensurate with the corresponding required criteria under each such tier and is reasonably related to such market quality benefits that each such tier is designed to achieve. The Exchange notes that the NBBO Setter/Joiner Tiers, as modified by the changes proposed herein, are comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), and that the Exchange's proposal to provide an additive rebate for a qualifying Member's executions of Joiner Volume, in addition to Setter Volume, under such tiers is similar in construct to pricing incentives that have been adopted by other exchanges.[26]

Standard Rebates for Added Non-Displayed Volume

The Exchange proposes to reduce the standard rebates for executions of Added Non-Displayed Volume. Added Non-Displayed Volume includes: (i) Pegged Orders[27] with a Midpoint Peg[28] instruction (such orders, ''Midpoint Peg orders'') in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, ''Added Midpoint Peg Volume''); and (ii) orders in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange, which are not Midpoint Peg orders (such orders, ''Added Non-Midpoint Peg Hidden Volume'').

Currently, the Exchange provides standard rebates of $0.0018 per share for executions of Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume. The Exchange now proposes to reduce each of these standard rebates to $0.0015 per share.[29] The purpose of reducing the standard rebates for executions of Added Midpoint Peg Volume and Add Non-Midpoint Peg Hidden Volume is for business and competitive reasons, as the Exchange believes reducing such rebates as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of

[22] In connection with the proposed changes to this tier, the Exchange is proposing to rename the relevant heading on the Fee Schedule from ''NBBO Setter Tier'' to ''NBBO Setter/Joiner Tiers'' and revise the note under the NBBO Setter/Joiner Tiers pricing table to reflect that the additive rebate under each such tier is applicable to executions of Setter Volume and Joiner Volume rather than being limited to Fee Codes associated with Setter Volume.

[23] The pricing for NBBO Setter/Joiner Tier 1 is referred to by the Exchange on the Fee Schedule under the new description ''NBBO Setter/Joiner Tier 1'' with a Fee Code of S1 to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[24] The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market.

[25] The Exchange notes that orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange. The pricing for NBBO Setter/Joiner Tier 2 is referred to by the Exchange on the Fee Schedule under the new description ''NBBO Setter/Joiner Tier 2'' with a Fee Code of S2 to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[26] *See, e.g.,* Securities Exchange Act Release No. 70664 (October 11, 2013), 78 FR 62804 (October 22, 2013) (SR–BATS–2013–054) (notice of filing and immediate effectiveness of fee changes adopted by BATS, including the adoption of an ''NBBO Joiner'' additive rebate provided for executions of orders that join the NBBO when BATS is not already at the NBBO to members that qualify for such incentive by achieving a specified volume threshold).

[27] Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and automatically re-prices in response to changes in the NBBO.

[28] A Midpoint Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to midpoint of the NBBO. *See* Exchange Rule 11.6(h)(2).

[29] The standard pricing for executions of Added Midpoint Peg Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Midpoint Peg'' and such orders will continue to receive a Fee Code of M on execution reports. The standard pricing for executions of Added Non-Midpoint Peg Hidden Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume'' and such orders will continue to receive a Fee Code of H on execution reports.

encouraging added and/or displayed liquidity. The Exchange notes that the proposed standard rebate for executions of Added Midpoint Peg Volume remains higher than, and competitive with, the standard rebates provided by at least one other exchange for executions of similar orders.[30] The Exchange also notes that the proposed standard rebate for executions of Added Non-Midpoint Peg Hidden Volume remains higher than, and competitive with, the standard rebates provided by at least one other exchange for executions of similar orders.[31]

Non-Display Add Tiers

As noted above, the Exchange currently provides a standard rebate of $0.0018 per share for executions of Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume), which the Exchange is proposing to reduce to $0.0015 per share, as described above. The Exchange also currently offers Non-Display Add Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Non-Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Non-Display Add Tiers by modifying the required criteria under Non-Display Add Tiers 1 and 2, and establishing a new Non-Display Add Tier 3, as further described below.

First, with respect to Non-Display Add Tier 1, the Exchange currently provides an enhanced rebate of $0.0027 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 3,000,000 shares.[32] The Exchange now proposes to modify Non-Display Add Tier 1 such that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 5,000,000 shares. Thus, such proposed change would increase the Non-Displayed ADAV threshold in the required criteria, which is designed to encourage Members to maintain or increase their liquidity-adding non-displayed order flow to the Exchange in order to qualify for the enhanced rebate for executions of Added Non-Displayed Volume provided under such tier. The Exchange is not proposing to change the rebates provided under this tier.

Second, with respect to Non-Display Add Tier 2, the Exchange currently provides an enhanced rebate of $0.0024 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,000,000 shares.[33] The Exchange now proposes to modify Non-Display Add Tier 2 such that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 2,000,000 shares. Thus, such proposed change would increase the Non-Displayed ADAV threshold in the required criteria, which is designed to encourage Members to maintain or increase their liquidity-adding non-displayed order flow to the Exchange in order to qualify for the enhanced rebate for executions of Added Non-Displayed Volume provided under such tier. The Exchange is not proposing to change the rebates provided under this tier.

Third, the Exchange is proposing to establish a new tier under the Non-Display Add Tiers, which, as proposed, would be referred to by the Exchange as Non-Display Add Tier 3. Under the proposed new Non-Display Add Tier 3, the Exchange would provide an enhanced rebate of $0.0020 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,000,000 shares.[34] The Exchange proposes to provide Members that qualify for the proposed new Non-Display Add Tier 3 free executions of orders in securities priced below $1.00 per share that add non-displayed liquidity to the Exchange, which is the same rebate that is currently applicable to such executions for all Members.

The tiered pricing structure for executions of Added Non-Displayed Volume under the Non-Display Add Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, particularly in the form of liquidity-adding non-displayed orders, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Non-Display Add Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Non-Displayed Volume provided under each of the Non-Display Add Tiers is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

Sub-Dollar Rebate Tier

The Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the Sub-Dollar Rebate Tier, under which the Exchange will provide an enhanced rebate for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Sub-Dollar Volume''). Currently, the Exchange provides a standard rebate of 0.075% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Volume, and this standard rebate is applicable to all such executions for all Members (including those that qualify for any of the Exchange's existing volume tiers). Now, under the proposed Sub-Dollar Rebate Tier, the Exchange will provide an enhanced rebate of 0.15% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.15% of the

[30] *See, e.g.,* the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a standard rebate of $0.0014 per share for executions of orders in Tape A and Tape B securities priced at or above $1.00 per share that add non-displayed midpoint liquidity and a standard rebate of $0.0010 per share for executions of orders in Tape C securities priced at or above $1.00 per share that add non-displayed midpoint liquidity.

[31] *See, e.g.,* the Cboe BZX Exchange, Inc. equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a standard rebate of $0.0010 per share for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity.

[32] The pricing for Non-Display Add Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 1'' with a Fee Code of H1 or M1, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[33] The pricing for Non-Display Add Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 2'' with a Fee Code of H2 or M2, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[34] The pricing for the proposed new Non-Display Add Tier 3 is referred to by the Exchange on the Fee Schedule under the new description ''Added non-displayed volume, Non-Display Add Tier 3'' with a Fee Code of H3 or M3, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

TCV.[35] The Exchange notes that the Sub-Dollar Rebate Tier will not apply to executions of orders in securities priced at or above $1.00 per share.

The Exchange believes that the proposed Sub-Dollar Rebate Tier provides an incremental incentive for Members to maintain or strive for higher ADAV on the Exchange in order to receive the proposed enhanced rebate for executions of Added Displayed Sub-Dollar Volume. As such, the proposed Sub-Dollar Rebate Tier is designed to incentivize Members that provide liquidity on the Exchange to increase their orders that add liquidity to the Exchange in order to qualify for the enhanced rebate for executions of Added Displayed Sub-Dollar Volume, which, in turn, the Exchange believes would also encourage the submission by qualifying Members of additional Added Displayed Sub-Dollar Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, including with respect to sub-dollar securities. The Exchange believes that this resulting additional liquidity-adding volume, including in the form of displayed volume in sub-dollar securities, would contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants and, in turn, enhance the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed new Sub-Dollar Rebate Tier is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), including pricing incentives that provide an enhanced rebate for executions of liquidity-adding orders in securities priced below $1.00 per share for firms that achieve a specified volume threshold that have been adopted by other exchanges.[36]

Maximum Rebate per Share

As noted above, in response to the competitive environment with respect to order execution, the Exchange offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. In this regard, the Exchange offers various volume-based tiers that provide qualifying Members an enhanced rebate or an additive rebate (which applies in addition to the otherwise applicable rebate) with respect to qualifying executions. Under the Exchange's current pricing, the highest rebate per share applicable to any execution is $0.0036, and for business and competitive reasons the Exchange does not wish to introduce a higher rebate per share with this proposal despite the fact that a higher rebate for certain executions would be possible after giving effect to the pricing changes described above. Thus, in order to maintain the same maximum rebate per share provided under the Exchange's current pricing, the Exchange proposes to add a note on the Fee Schedule stating that to the extent a single execution qualifies for one or more additive rebates, the maximum combined rebate per share provided by the Exchange shall be $0.0036. The Exchange notes that since $0.0036 is the highest rebate per share currently provided by the Exchange, this proposed change, by itself, will not result in any Member receiving a lower maximum rebate per share than it is currently provided for any execution. The Exchange also notes that other exchanges limit the maximum rebate per share in connection with the provision of enhanced and/or additive rebates.[37]

Eliminate Step-Up Additive Rebate

Finally, the Exchange proposes to eliminate the Step-Up Additive Rebate. The Exchange currently offers the Step-Up Additive Rebate, which is a volume-based tier, under which the Exchange provides an additive rebate of $0.0002 per share in addition to the otherwise applicable rebate for executions of Added Displayed Volume (other than orders that establish the NBBO, if such Member qualifies for the NBBO Setter Tier, and Retail Orders) for Members that qualify for such tier by achieving one of the two specified alternative criteria based on Step-Up ADAV and/or ADAV thresholds. The Exchange adopted the Step-Up Additive Rebate in May 2022 for the purpose of encouraging Members that provide liquidity on the Exchange to increase their liquidity-adding order flow in order to achieve the applicable volume thresholds, thereby providing greater execution opportunities on the Exchange.[38] However, the Exchange no longer wishes to, nor is it required to, maintain such tier. Thus, the proposed rule change removes such tier, as the Exchange would rather redirect future resources and funding into other incentives and tiers designed to incentivize increased order flow or otherwise enhance market quality on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[39] in general, and with sections 6(b)(4) and 6(b)(5) of the Act,[40] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current

[35] The pricing for the proposed new Sub-Dollar Rebate Tier is referred to by the Exchange on the Fee Schedule under the new description ''Sub-Dollar Rebate Tier'' with a Fee Code of ''L'' to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[36] *See, e.g.,* the NYSE Arca Equities Fees and Charges (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*), which reflects a standard credit of 0.0% of the total dollar value for executions of securities priced below $1.00 per share, as well as the ''Sub-Dollar Adding Step Up Tier'' pricing structure under which NYSE Arca provides higher credits (ranging from 0.05% to 0.15% of the total dollar value) for executions of orders in securities priced below $1.00 per share for firms that qualify for any such tier by achieving certain specified volume thresholds.

[37] *See, e.g.,* the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects various maximum rebates in connection with the provision of an additive rebate for executions of certain midpoint liquidity; the NYSE Arca Equities Fees and Charges (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*), which provides that in connection with the ''Tape B Additional Credit'' the credit shall be in addition to the ETP Holder's Tiered or Standard credit(s) and such combined credit(s) in Tape B shall not exceed $0.0032, subject to certain exceptions for Lead Market Makers, which are subject to a higher, but still limited, per share credit for the applicable executions.

[38] *See* Securities Exchange Act Release No. 94863 (May 6, 2022), 87 FR 29197 (May 12, 2022) (SR–MEMX–2021–11) [sic] (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of the Step-Up Additive Rebate).

[39] 15 U.S.C. 78f.

[40] 15 U.S.C. 78f(b)(4) and (5).

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.'' [41]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to decrease the Exchange's expenditures with respect to its transaction pricing and incentivize market participants to direct additional order flow, including various forms of liquidity-adding volume and aggressively priced displayed orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers 1, 3 and 5, the DLI Tiers 1 and 2, and the Non-Display Add Tiers 1 and 2, each as modified by the changes proposed herein, as well as the proposed new Non-Display Add Tier 3 and the proposed new Sub-Dollar Rebate Tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their liquidity-adding order flow, including in the forms of Added Displayed Volume, Added Non-Displayed Volume and Added Displayed Sub-Dollar Volume, as applicable, to the Exchange, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume, Added Non-Displayed Volume, and Added Displayed Sub-Dollar Volume, as applicable, under each such tier is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. Additionally, the Exchange believes the proposed new Sub-Dollar Rebate Tier is reasonable, in that it is comparable to pricing incentives adopted by other exchanges that provide an enhanced rebate for executions of liquidity-adding orders in securities priced below $1.00 per share for firms that achieve a specified volume threshold.[42]

The Exchange believes that the proposed NBBO Setter/Joiner Tiers are a reasonable means to attract aggressively priced displayed liquidity to the Exchange. As noted above, the proposed NBBO Setter/Joiner Tiers are comparable to other volume-based tiers, and the Exchange believes such tiers are reasonable, equitable and not unfairly discriminatory for the same reasons described above with respect to volume-based tiers, as the proposed NBBO Setter/Joiner Tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to incentivize the entry of aggressively priced displayed orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market. As such, the Exchange believes the additive rebates for executions of Setter Volume and Joiner Volume provided under the NBBO Setter/Joiner Tiers are reasonably related to the market quality benefits that such tiers are designed to promote.

Specifically, the Exchange believes that its proposal to make the additive rebate under each of the NBBO Setter/Joiner Tiers applicable to a qualifying Member's executions of Joiner Volume (in addition to Setter Volume, as is the case under the NBBO Setter Tier today) is reasonable, equitable and not unfairly discriminatory because, as described above, the Exchange believes that doing so would incentivize the submission of additional orders that establish a new BBO on the Exchange that matches the NBBO first established on an away market (in addition to orders that establish the NBBO, which are currently incentivized under the NBBO Setter Tier and will continue to be incentivized under the NBBO Setter/Joiner Tiers), and the Exchange believes that the resulting increased submission of such aggressively priced displayed liquidity would benefit all Members and market participants, including public investors, by increasing execution opportunities, tightening spreads, and promoting price discovery on the Exchange. Moreover, the Exchange believes such proposal is reasonable, in that it is similar in construct to pricing incentives that have been adopted by other exchanges that provide an additive rebate for executions of orders that join the NBBO for members that achieve certain specified volume criteria.[43]

The Exchange further believes that the proposed additive rebate for executions of Setter Volume and Joiner Volume under each of the NBBO Setter/Joiner Tiers is reasonable and consistent with an equitable allocation of fees because, as described above, the Exchange believes that each such rebate is commensurate with the corresponding required criteria under each such tier and is reasonably related to such market quality benefits that each such tier is designed to achieve.

The Exchange believes that the proposed changes to reduce the standard rebates provided for executions of Added Non-Displayed Volume (*i.e.,* both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume) are reasonable because, as described above, such changes are designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed

[41] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[42] *See supra* note 36.

[43] *See supra* note 26.

liquidity, and the proposed new standard rebates for executions of Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume remain higher than, and competitive with, the standard rebates provided by at least one other exchange in each case for executions of similar orders.[44] The Exchange also believes the proposed standard rebates for executions of Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume are equitable and not unfairly discriminatory, as such standard rebates will apply equally to all Members.

The Exchange believes that its proposal to limit the maximum combined rebate per share provided for any execution on the Exchange that qualifies for one or more additive rebates to $0.0036 is reasonable, equitable and not unfairly discriminatory, as this limitation will apply to all Members equally, in that no Member may be eligible to receive such a rebate that is greater than $0.0036. Moreover, the highest rebate per share applicable to any execution under the Exchange's current pricing is $0.0036, so this proposed change, by itself, will not result in any Member receiving a lower maximum rebate per share than it is currently provided for any execution. The Exchange notes that it is not required to provide Members any opportunities to receive rebates or, to the extent that it does provide rebates under its transaction pricing, to maintain any specific level of rebate with respect to any type of transaction. The Exchange further notes that other exchanges also limit the maximum rebate per share in connection with the provision of enhanced and/or additive rebates, and therefore, this aspect of the proposal does not raise any new or novel issues that have not previously been considered by the Commission.[45]

The Exchange believes the proposed change to eliminate the Step-Up Additive Rebate is reasonable because, as noted above, it would enable the Exchange to redirect the associated resources and funding into other incentives and tiers designed to incentivize increased order flow or otherwise enhance market quality on the Exchange, and the Exchange is not required to maintain such incentive or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such incentive is also equitable and not unfairly discriminatory because it applies equally to all Members, in that the incentive would no longer be available for any Member.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of sections 6(b)(4) and 6(b)(5) of the Act[46] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the changes to the Exchange transaction pricing under this proposal are intended to decrease the Exchange's expenditures with respect to its transaction pricing and attract order flow to the Exchange by continuing to offer competitive pricing while also incentivizing market participants to submit various forms of liquidity-adding volume and aggressively priced displayed liquidity, thereby promoting price discovery and enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [47]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including various forms of liquidity-adding volume and aggressively priced displayed orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market, to the Exchange, thereby promoting price discovery and enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The opportunity to qualify for the proposed new criteria under the Liquidity Provision Tiers 1, 3 and 5, the DLI Tiers 1 and 2, and the Non-Display Add Tiers 1 and 2, as well as the proposed new Non-Display Add Tier 3 and the proposed new Sub-Dollar Rebate Tier, and thus receive the corresponding rebates for executions of Added Displayed Volume, Added Non-Displayed Volume and Added Displayed Sub-Dollar Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the NBBO Setter/Joiner Tiers 1 and 2, and thus receive the corresponding additive rebates for executions of Setter Volume and Joiner Volume, would be available to all Members that meet the associated volume requirements in any month. The Exchange believes its proposal to make the additive rebate under the NBBO Setter/Joiner Tiers applicable to a qualifying Member's executions of Joiner Volume will benefit competition by rewarding Members that help the Exchange to join other market centers at the NBBO. As described above, the Exchange believes that, after giving effect to the changes proposed herein, the required criteria under each of the tiers described above is commensurate with the corresponding rebate under each such tier and is reasonably related to the enhanced liquidity and market quality that each such tier is designed to promote. Additionally, as noted above, the proposed reduced standard rebates for executions of Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume) would continue to apply equally to all Members in the same manner that such standard rates currently do today.

The Exchange does not believe the proposed change to eliminate the Step-Up Additive Rebate will impose any

[44] *See supra* notes 30–31.

[45] *See supra* note 37.

[46] 15 U.S.C. 78f(b)(4) and (5).

[47] *See supra* note 41.

burden on intramarket competition because such change will apply to all Members uniformly, in that such incentive will no longer be available to any Member. Additionally, the Exchange does not believe the proposed change to limit the maximum combined rebate per share provided for any execution on the Exchange that qualifies for one or more additive rebates will impose any burden on intramarket competition because, as described above, such limitation will apply to all Members equally, in that no Member may be eligible to receive such a rebate that is greater than $0.0036, and, as this is the highest rebate per share applicable to any execution under the Exchange's current pricing, no Member will receive a lower maximum rebate per share than it is currently provided for any execution as a result of this proposed change.

For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume), Added Displayed Sub-Dollar Volume, Setter Volume and Joiner Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures with respect to its transaction pricing and attract additional order flow to the Exchange through the provision of certain enhanced and additive rebates under volume-based tiers, which have been widely adopted by exchanges, and standard pricing that is comparable to, and competitive with, pricing for similar executions in place at other exchanges.[48] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar standard pricing for executions of Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume), as well as similar pricing incentives and discounts to market participants that achieve certain volume criteria and thresholds. With respect to the Exchange's proposal to make the additive rebates provided under the NBBO Setter/Joiner Tiers applicable to executions of Joiner Volume (in addition to Setter Volume, as is the case under the NBBO Setter Tier today), the Exchange believes that the promotion of displayed liquidity at the NBBO, whether through orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market, enhances market quality for all market participants and promotes competition amongst market centers. Additionally, as noted above, eliminating the Step-Up Additive Rebate would allow the Exchange to redirect the associated resources and funding into other incentives and tiers designed to enhance market quality on the Exchange, which would ultimately enable the Exchange to better compete with other market centers. The Exchange does not believe that its proposal to limit the maximum combined rebate per share provided for any execution on the Exchange that qualifies for one or more additive rebates will impose any burden on intermarket competition, and the Exchange notes that limiting the maximum rebate per share in connection with similar types of incentives is consistent with the practices of other exchanges.[49]

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [50] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[51] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [52] and Rule 19b–4(f)(2) [53] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[48] *See supra* notes 30–31.

[49] *See supra* note 37.

[50] *See supra* note 41.

[51] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[52] 15 U.S.C. 78s(b)(3)(A)(ii).

[53] 17 CFR 240.19b–4(f)(2).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–33 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2022–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–33 and should be submitted on or before January 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27161 Filed 12–14–22; 8:45 am]

BILLING CODE 8011–01–P

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34770; File No. 812–15382]

MidCap Financial Investment Corporation, et al.

December 9, 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: MidCap Financial Investment Corporation, Apollo Senior Floating Rate Fund Inc., Apollo Tactical Income Fund Inc., Apollo Debt Solutions BDC, Apollo Diversified Credit Fund, Apollo Investment Management, L.P., Apollo Credit Management, LLC, Apollo Capital Credit Adviser, LLC, AA Direct, L.P., A–A European Senior Debt Fund, L.P., AA Infrastructure Fund 1 Ltd., ACE Credit Fund, L.P., AESI II, L.P., AGRE Debt Fund I, L.P., AGRE U.S. Real Estate Fund, L.P., ALM V, Ltd., ALM VI, Ltd., ALM VII (R), Ltd., ALM VII (R)-2, Ltd., ALM VII, Ltd., ALM VIII, Ltd., ALM XII, Ltd., ALM XIX, Ltd., ALM XVI, Ltd., ALM XVII, Ltd., ALM XVIII, Ltd., ALME Loan Funding IV B.V., Amissima Diversified Income ICAV, AMN Loan Fund, L.P., AP Kent Credit Master Fund, L.P., Apollo Accord Master Fund II, L.P., Apollo Accord Master Fund III, L.P., Apollo Accord Fund III B, L.P., Apollo Accord Fund IV, L.P., Apollo A–N Credit Fund, L.P., Apollo Asia Real Estate Fund II, L.P., Apollo Atlas Master Fund, LLC, Apollo Chiron Credit Fund, L.P., Apollo Commercial Real Estate Finance, Inc., Apollo Credit Master Fund Ltd., Apollo Credit Opportunity Fund III LP, Apollo Credit Strategies Master Fund Ltd., Apollo European Principal Finance Fund III (Dollar A), L.P., Apollo Hybrid Value Fund, L.P., Apollo Hybrid Value Fund II, L.P., Apollo Humber Partners, L.P., Apollo Humber Management, L.P., Apollo Impact Mission Fund, L.P., Apollo Infrastructure Opportunities Fund II, L.P., Apollo Investment Fund IX, L.P., Apollo Investment Fund VII, L.P., Apollo Investment Fund VIII, L.P., Apollo Kings Alley Credit Fund, L.P., Apollo Lincoln Fixed Income Fund, L.P., Apollo Lincoln Private Credit Fund, L.P., Apollo Moultrie Credit Fund, L.P., Apollo Natural Resources Partners II, L.P., Apollo Natural Resources Partners III, L.P., Apollo Navigator Aviation Fund I, L.P., Apollo Revolver Fund, L.P., Apollo Structured Credit Recovery Master Fund IV LP, Apollo Strategic Origination Partners, L.P., Apollo Tactical Value SPN Investments, L.P., Apollo Total Return Master Fund Enhanced LP, Apollo Total Return Master Fund L.P., Apollo Tower Credit Fund, L.P., Apollo U.S. Real Estate Fund II L.P., Apollo U.S. Real Estate Fund III, L.P., Apollo Zeus Strategic Investments, L.P., Apollo/Cavenham European Managed Account II, L.P., Athene Holding Ltd., Athora Lux Invest S.C.Sp., Financial Credit Investment II, L.P., Financial Credit Investment III, L.P., Financial Credit Investment IV, L.P., MidCap FinCo Holdings Ltd, NNN Investor 1, L.P., Athora Lux Invest NL S.C.Sp., ACE Credit Management, LLC, ACF Europe Management, LLC, ACREFI Management, LLC, Aegon Ireland plc, AGRE—CRE Debt Manager, LLC, AGRE NA Management, LLC, AP Kent Management, LLC, Apollo Accord Management II, LLC, Apollo Accord Management III, LLC, Apollo Accord Management III B, L.P., Apollo Accord Management IV, L.P., Apollo A–N Credit Management, LLC, Apollo Asia Management II, L.P., Apollo Asset Management Europe LLP, Apollo Atlas Management, LLC, Apollo Capital Management, L.P., Apollo Centre Street Management, LLC, Apollo Centre Street Partnership L.P., Apollo Chiron Management, LLC, Apollo Credit Management (CLO), LLC, Apollo Credit Opportunity Management III, LLC, Apollo EPF Management III, LLC, Apollo Europe Management III, LLC,

Apollo European Senior Debt Management, LLC, Apollo European Strategic Management, L.P., Apollo Global Real Estate Management, L.P., Apollo Hercules Management, LLC, Apollo Hercules Partners, L.P., Apollo Hybrid Value Management, L.P., Apollo Hybrid Value Management II, L.P., Apollo Impact Mission Management, L.P., Apollo India Credit Opportunity Management, LLC, Apollo Infrastructure Opportunities Management II, L.P., Apollo Investment Management Europe LLP, Apollo Kings Alley Credit Fund Management, LLC, Apollo Lincoln Fixed Income Management, LLC, Apollo Lincoln Private Credit Management, LLC, Apollo Management International LLP, Apollo Management IX, L.P., Apollo Management VII, L.P., Apollo Management VIII, L.P., Apollo Moultrie Credit Fund Management LLC, Apollo NA Management II, LLC, Apollo NA Management III, LLC, Apollo Navigator Management I, LLC, Apollo Oasis Management, LLC, Apollo Origination Management, L.P., Apollo PPF Credit Strategies Management, LLC, Apollo Oasis Partners, L.P., Apollo Origination Partnership, L.P., Apollo Palmetto Strategic Partnership, L.P., Apollo Revolver Capital Management, LLC, Apollo ST Fund Management LLC (DE), Apollo Strategic Origination Management, L.P., Apollo Structured Credit Recovery Management IV LLC, Apollo Tactical Value SPN Management, LLC, Apollo Thunder Management, LLC, Apollo Thunder Partners, L.P., Apollo Total Return Enhanced Management, LLC, Apollo Tower Credit Management, LLC, Apollo Union Street Management, LLC, Apollo Union Street Partners, L.P., Apollo Zeus Strategic Management, LLC, Apollo/Cavenham EMA Management II, LLC, Financial Credit Investment II Manager, LLC, Financial Credit Investment III Manager, LLC, Financial Credit Investment IV Manager, LLC, Apollo Investment Management Europe (Luxembourg) S.a r.l., Apollo Total Return Management LLC, Apollo Commodities Management, L.P., Apollo Insurance Solutions Group LP, Apollo MidCap US Direct Lending 2019, L.P., NNN Investor 2 (Auto), L.P., NNN Opportunities Fund, L.P., Apollo PPF Opportunistic Credit Partners (Lux), SCSp, Apollo PPF Credit Strategies, LLC, Apollo PPF Credit Management, LLC, Apollo Co-Investment Capital Management, LLC, Alteri Investments II, SCSp, Merx Aviation Finance, LLC., Apollo Accord+ Fund (Lux), SCSp, Apollo Accord+ Offshore Fund, L.P., Apollo Accord+ Fund, L.P., Apollo Revolver Fund II (Offshore), L.P., Apollo Revolver Fund II, L.P., Apollo Revolver Fund II (ATH), L.P., Apollo Accord+ Management, L.P., Apollo Revolver Management II (ATH), L.P., Apollo Revolver Management II, L.P., Apollo Accord Fund V, L.P., Apollo Investment Fund X, L.P., Apollo Total Return Fund—Investment Grade, L.P., Apollo Accord Management V, L.P., Apollo Management X, L.P., Apollo Total Return Fund—Investment Grade Management, L.P., and ACMP Holdings, LLC.

FILING DATES: The application was filed on August 31, 2022, and amended on December 06, 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 January 3, 2023, 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.* Christopher Healey, Esq. at *Christopher.Healey@stblaw.com,* and Steven Grigoriou, Esq., at *Steven.Grigoriou@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, 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 December 6, 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.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27168 Filed 12–14–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Matching Program

AGENCY: U.S. Small Business Administration, Office of Government Contracting and Business Development.

ACTION: Notice of a New Matching Program.

SUMMARY: The United States Small Business Administration (SBA) and Department of Veteran Affairs (VA) pursuant to Section 862 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (January 1, 2021), amended 38 U.S.C. 8127 and transferred the responsibility for certification of Veteran-Owned Small Businesses (VOSB) and Service-Disabled Veteran-Owned Small Businesses (SDVOSB) to SBA as of January 1, 2023 (Transfer Date).

The Computer Matching program seeks to ensure that applicants for SBA Veteran Small Business Certification Program are eligible as qualifying veterans. This will be accomplished by matching specific VA data with SBA data to determine what applicants and participants meet SBA's Veteran Small Business Certification Program criteria.

DATES: Submit comments on or before January 17, 2023. This new matching agreement will be effective upon publication with matching to start January 9, 2023, and expires 18 months from the date of publication, however, SBA projects termination of matching no later than July 10, 2023.

ADDRESSES: Inquiries and comments on this proposed matching program can be addressed to Larry Stubblefield, Associate Administrator, Office of Veterans Business Development, *Larry.Stubblefield@sba.gov,* ((202) 205–6572), Isabelle James, Senior Advisor, Office of the Administrator, *Isabelle.James@sba.gov,* and Jason Hoge, Acting Exec. Director, Product Engineering, Tel.: 612–725–4337 Email: *jason.hoge@va.gov.*

FOR FURTHER INFORMATION CONTACT: For general information, please contact:

Ariel Nerbovig, *Ariel.Nerbovig@sba.gov,* IT Program Manager; Kelvin Moore, ((202) 921–6273), SBA Chief Information Security Officer, Office of the Chief Information Officer, SBA Chief Information Officer/Senior Agency Official for Privacy, Stephen Kucharski, *Stephen.Kucharski@sba.gov,* ((202) 205–7551) and VA Chief Information Security Officer, Lynette Sherrill: (202) 270–1878, *lynette.sherrill@va.gov.*

SUPPLEMENTARY INFORMATION: The Agreement between SBA and VA is expected to aid in the transition and identifying qualified veterans. VA maintains a list of veterans and service-disabled veterans and will provide SBA with this data. To accomplish this, VA and SBA will participate in a Computer Matching program to match data to identify what veterans are qualifying veterans and to verify eligibility for SBA's certification program. The average number of records being matched on an annual basis is 18,910.

Participating Agencies

U.S. Department of Veteran Affairs and U.S. Small Business Administration

Authority for Conducting the Matching Program

1. Section 862 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (January 1, 2021) (NDAA 2021), amended 38 U.S.C. 8127 and transferred the responsibility for certification of VOSB and SDVOSB for VA procurements to SBA as of January 1, 2023 (Transfer Date). NDAA 2021 also amended Section 36 of the Small Business Act to create a certification requirement for SDVOSBs seeking sole source and set-aside contracts across the Federal Government.

2. Pursuant to section 862(b) of the NDAA 2021, VA shall verify an individual's status as a veteran or a service-disabled veteran and establish a system to permit SBA to access, but not alter, the verification of such status.

3. Pursuant to section 862(d) of the NDAA 2021, upon request by SBA, federal agencies shall provide data that SBA determines to be necessary to carry out the certification of a small business concern owned and controlled by veterans or service-disabled under sections 36 and 36A of the Small Business Act.

Purpose(s)

To be eligible for certification in SBA's Veteran Small Business Certification Program, an applicant's small business must be owned and controlled by one or more qualifying veterans. A ''qualifying veteran'' is a veteran as defined by 38 U.S.C. 101(2) or a service-disabled veteran. A service-disabled veteran is an individual that possesses either a valid disability rating letter issued by VA, establishing a service-connected rating between 0 and 100 percent, or a valid disability determination from the Department of Defense or is registered in the Beneficiary Identification and Records Locator Subsystem maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify. VA maintains a list of veterans and service-disabled veterans and will provide SBA with this data. To accomplish this, VA and SBA will participate in a Computer Matching program to match data in order to identify what veterans are qualifying veterans and to verify eligibility for SBA's certification program.

Categories of Individuals

An applicant's small business must be owned and controlled by one or more qualifying veterans.

Categories of Records

Information relating to applicants' small business owned or controlled by veterans for certification.

Specific data elements to match from SBA are: Veteran Business Owner applicant's first name, last name, street address 1, street address 2, birth date, city, state, country, zip code, and optional elements: middle name and gender. VA will respond from match to SBA and return: Veteran's combined disability rating (disability rating and combined effective date); Service-connected determination (individual ratings, decision, effective date, and rating percentage; and Title 38 Veteran status data (veteran status). As of March 2023, VA will not give out social security numbers for new Veteran accounts. SSN will not be used in this match.

System(s) of Records

''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28)'' last amended at 86 FR 61858 (November 8, 2021). ''Veterans Affairs Profile—VA, (192VA30),'' established at 87 FR 36207 (June 15, 2022). ''Veterans Affairs/Department of Defense Identity Repository (VADIR)—VA (138VA005Q),'' last amended at 74 FR 142 (July 27, 2009), is in the process of being republished. ''Government Contracting and Business Development System'', SBA 30 system of records, as provided by 86 FR 19078. SBA is currently updating SBA 30 which will not impact this matching agreement.

Larry Stubblefield,

Associate Administrator, Office of Veterans Business Development, United State Small Business Administration.

[FR Doc. 2022–27158 Filed 12–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 11937]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''New Photography 2023: Kelani Abass, Akinbode Akinbiyi, Yagazie Emezi, Amanda Iheme, Abraham Oghobase, Karl Ohiri, Logo Oluwamuyiwa'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''New Photography 2023: Kelani Abass, Akinbode Akinbiyi, Yagazie Emezi, Amanda Iheme, Abraham Oghobase, Karl Ohiri, Logo Oluwamuyiwa'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28,

2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–27215 Filed 12–14–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11938]

Designation of Osama Mehmood, Atif Yahya Ghouri, Muhammad Maruf, and Qari Amjad as Specially Designated Global Terrorists

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, E.O. 13284 of January 23, 2003, and E.O. 13886 of September 9, 2019, I hereby determine that the persons known as Osama Mehmood (also known as Usama Mahmud, Abu Zar, Atta Ullah, Zar Wali); Atif Yahya Ghouri (also known as Yahya Shoaib Ghauri, Qari Atif, Qari Ibrahim, Atif Ghauri); and Muhammad Maruf (also known as Ali Hamzah, Maulana Musanna, Maulana Ubaidullah) are leaders of al-Qa'ida in the Indian Subcontinent, and the person known as Qari Amjad (also known as Mufti Hazrat, Mufti Muzahim) is a leader of Tehrik-e Taliban Pakistan, groups whose property and interests in property are currently blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Authority: E.O. 13224.

Dated: November 8, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–27174 Filed 12–14–22; 8:45 am]

BILLING CODE 4710–AD–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0016]

Request for Comments and Notice of a Public Hearing Regarding the 2023 Special 301 Review

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, the Office of the United States Trade Representative (USTR) conducts a review to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection. Based on this review, the U.S. Trade Representative determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List.

DATES:

January 30, 2023 at 11:59 p.m. EST: Deadline for submission of written comments from the public.

February 13, 2023 at 11:59 p.m. EST: Deadline for submission of written comments from foreign governments.

February 22, 2023: Deadline for the Special 301 Subcommittee of the Trade Policy Staff Committee (Subcommittee) to pose questions on written comments.

March 7, 2023 at 11:59 p.m. EST: Deadline for submission of commenters' responses to questions from the Subcommittee.

On or about April 28, 2023: USTR will publish the 2023 Special 301 Report within 30 days of the publication of the National Trade Estimate Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the submission instructions in section IV below. The docket number is USTR–2022–0016. For alternatives to on-line submissions, please contact USTR at *Special301@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Ariel Gordon, Director for Innovation and Intellectual Property, at *Special301@ustr.eop.gov* or (202) 395–6862. You can find information about the Special 301 Review at *https://www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the Special 301 provisions, requires the U.S. Trade Representative to identify countries that deny adequate and effective IP protections or fair and equitable market access to U.S. persons who rely on IP protection. The Trade Act requires the U.S. Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a Priority Watch List and Watch List to assist in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Subcommittee, which reviews information from many sources, and consults with and makes recommendations to the U.S. Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. As discussed below, in 2023, in lieu of an in-person hearing, the Subcommittee will submit written questions to commenters as part of the review process and will allow commenters to provide written responses. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries the acts, policies, or practices of which deny adequate and effective protection for IP rights or deny fair and equitable market access to U.S. persons who rely on IP protection. The Special 301 provisions also require the U.S. Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 32.6 of the United States-Mexico-Canada Agreement (USMCA) (as defined in section 3 of the USMCA Implementation Act). USTR invites the public to submit

views relevant to this aspect of the review.

The Special 301 provisions require the U.S. Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the National Trade Estimate Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report about April 28, 2023.

II. Public Comments

To facilitate this year's review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor into the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

III. Public Participation

In 2023, due to COVID–19, USTR will foster public participation via written submissions rather than an in-person hearing. The Subcommittee will review written comments and may ask clarifying questions to commenters. The Subcommittee will post the questions on the public docket, other than questions that include properly designated business confidential information (BCI). The Subcommittee will send questions that include properly designated BCI to the relevant commenters by email, and will not post these questions on the public docket. Replies to questions that contain BCI must follow the procedures in section IV below.

In order to be eligible to receive written questions, the written submissions must be in English and must include the name, address, telephone number, email address, and firm or affiliation of the submitter.

IV. Submission Instructions

All submissions must be in English and sent electronically via *Regulations.gov* using docket number USTR–2022–0016. To submit comments, locate the docket (folder) by entering the number USTR–2022–0016 in the 'search for dockets or documents on agency actions' window at the *Regulations.gov* home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment'.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol: Commenter Name or Organization_2023 Special 301_Review_Comment. Please include the following information in the 'start typing comment here' field: '2023 Special 301 Review.' Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'start typing comment here' field. For further information on using *Regulations.gov*, please select 'FAQ' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains BCI, the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the filer should type 'business confidential' in the 'start typing comment here' field. Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through *Regulations.gov*. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at *Special301@ustr.eop.gov*.

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR–2022–0016 in the 'search' field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.

[FR Doc. 2022–27195 Filed 12–14–22; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Dispose 5.19 Acres of Airport Land at Hanscom Field, Bedford, MA

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

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Massachusetts Port Authority to dispose of 5.19 acres of land at Hanscom Field, Bedford, MA. The disposal of 2 parcels is associated with a land swap with an adjacent property. The 2 parcels are not required for existing or future aviation development and are currently undeveloped. The disposal will not affect the airport's future development needs. The land disposal proceeds will be deposited in the airport's operation and maintenance account.

DATES: Comments must be received on or before January 17, 2023.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590

• *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, 01803. Telephone: 781–238–7618.

SUPPLEMENTARY INFORMATION:

Authority: 49 U.S.C. 47107(h)(2).

Issued in Burlington, Massachusetts on December 2, 2022.

Julie Seltsam-Wilps,

Deputy Director, ANE–600.

[FR Doc. 2022–26620 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Proposed Land Use Changes at Mobile International Airport (BFM) Located in Mobile, Alabama

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from the Mobile Airport Authority to waive the requirement that a 0.95± parcel of property, located on Mobile International Airport (BFM) in Mobile, Alabama, be used for aeronautical purposes.

DATES: Comments must be received on or before January 17, 2023.

ADDRESSES: The public may send comments using the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.

• *Fax:* 601–664–9901.

• *Mail:* Matt Mims, Program Manager, Jackson Airports District Office, 100 West Cross St., Suite B, Jackson, MS 39208–2307.

• *Hand Delivery:* Deliver to mail address above between 8 a.m. and 5 p.m. Monday through Friday, excluding Federal holidays.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mobile Airport Authority Attn: Mr. Chris Curry at the Mobile Airport Authority, 1891 9th Street, Mobile, Alabama 36615.

FOR FURTHER INFORMATION CONTACT: Matt Mims, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9893. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Mobile Airport Authority to release approximately 0.95± acres of airport property at Mobile International Airport (BFM) under the provisions of Title 49, U.S.C. 47153(c). The FAA determined that the request to release property at Mobile International Airport (BFM) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. An easement on the property will be purchased by Elcan & Associates, Inc. in order to build an access roadway and right-of-way, who also owns the adjacent site directly south. The property is located on the southwest side of airport property adjacent to Runway 14/32. The airport will receive fair market value for the easement and right-of-way, and the net proceeds from the sale will be used for maintenance and operations at the Mobile International Airport (BFM).

The proposed use of this property is compatible with airport operations. Copies of the Property Appraisal, Boundary Survey, and Legal Description are available for examination by appointment. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Mobile Airport Authority, 1891 9th Street, Mobile, Alabama 36615.

Issued in Jackson, Mississippi on December 12, 2022.

Rans D. Black,

Manager, Jackson Airports District Office Southern Region.

[FR Doc. 2022–27230 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Change Land Use From Aeronautical to Non-Aeronautical for 1.405 Acres of Airport Land at Hancock County Bar Harbor Airport, Trenton, ME

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

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from Hancock County to change land use from aeronautical to non-aeronautical for 1.405 acres for non-aeronautical revenue generation at Hancock County Bar Harbor Airport, Trenton, ME. The parcel is not required for existing or future aviation development and is currently undeveloped. As such, the land use change will not affect the airport's future development needs, but will increase the airport's revenue stream over the term of the lease. The land lease proceeds will be deposited in the airport's operation and maintenance account.

DATES: Comments must be received on or before January 17, 2023.

ADDRESSES: You may send comments using any of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* and follow the instructions on providing comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

Authority: 49 U.S.C. 47107(h)(2).

Issued in Burlington, Massachusetts on December 2, 2022.

Julie Seltsam-Wilps,

Deputy Director, ANE–600.

[FR Doc. 2022–26617 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2023 Competitive Funding Opportunity: Transit Worker and Rider Safety (TWRS) Best Practices Research Project

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for up to $500,000 in fiscal year (FY) 2021 funds for a single cooperative agreement for a research project to help transit agencies address operator and rider assaults. The goals of this research project are to identify public safety risks for transit vehicle operators and riders, determine the most effective mitigation strategies to minimize those risks, and promote the implementation of those strategies.

DATES: Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59 p.m. Eastern time on February 13, 2023. The funding opportunity ID is FTA–2023–005–TRI–TWRS. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Roy Chen, FTA Office of Research, Demonstration, and Innovation, 202–366–0462, *royweishun.chen@dot.gov.*

SUPPLEMENTARY INFORMATION:

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B. Federal Award Information
C. Eligibility Information
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A. Program Description

According to the National Transit Database (NTD), the number of transit worker and rider assault incidents have been trending upward. The data shows a roughly five-fold increase in transit assault incidents reported from 2009 (319 reported incidents) to 2019 (1539 reported incidents). To address this issue and help reduce assaults on transit systems across the nation, FTA will competitively award up to $500,000 in Public Transportation Innovation Program funds (49 U.S.C. 5312) for a research cooperative agreement to improve the safety of transit vehicle operators and riders. This notice of funding opportunity (NOFO) (Federal Assistance Listing: 20.530) aligns with the U.S. Department of Transportation's (DOT) strategic goals and FTA's focus to improve and enhance the safety of America's public transportation systems.

The Transit Worker and Rider Safety Best Practices Research Project will be carried out in two phases.

Phase I: Transit Worker and Rider Safety Best Practices Report.

Phase II: Transit Worker and Rider Safety Pilot Demonstration Project.

This notice provides funding only for Phase I. In Phase I, the selected applicant will conduct research in the following areas: (1) identifying key issues and trends in operator and rider assaults by evaluating available data on operator and rider assaults from various sources, including the NTD; (2) assessing assault data quality and accuracy reported to the NTD; (3) documenting and assessing mitigation strategies and solutions for the issues and trends identified; (4) developing outreach materials and tools that can be used by the industry to effectively implement the identified mitigation measures; and (5) proposing a bold and innovative pilot demonstration project that can showcase the utility of those mitigation strategies and promote the adoption of those solutions. FTA may, at its discretion, implement the proposed pilot demonstration project for a Phase II. The decision will be made after the completion of Phase I of this research project.

Because this notice provides funding only for Phase I, applicants should submit proposals to address only Phase I. Eligibility for Phase II is subject to the availability of future funding, the quality of the materials developed in Phase I, and the merit of the proposed pilot demonstration project developed in Phase I.

This research effort builds upon FTA's prior safety efforts such as the Bus Compartment Redesign Program launched on October 8, 2020 (*https://www.transit.dot.gov/research-innovation/redesign-transit-bus-operator-compartment-improve-safety-operational-efficiency*), and the request for information on Transit Worker Safety released in the **Federal Register** on September 24, 2021 (*https://www.transit.dot.gov/about/news/federal-transit-administration-announces-request-information-transit-worker-safety*).

B. Federal Award Information

This Notice makes available up to $500,000 in Public Transportation Innovation Program (49 U.S.C. 5312) funds for a single award to improve transit vehicle operator and rider safety. Only proposals from eligible recipients for eligible activities will be considered for funding. FTA seeks a project that can begin implementation within three months after award of the Cooperative Agreement. The maximum period of performance allowed for the work covered by the award should not exceed 24 months from the date of award. FTA will extend the period of performance if Phase II is approved and funded. Pre-award authority is subject to FTA approval and is only available for costs incurred after the announcement of a project selection on FTA's website.

The project selected under this competition is for research and development and, as such, FTA Research Circular 6100.1E (available at *https://www.fta.dot.gov/regulations-and-guidance/fta-circulars/research-technical-assistance-and-training-program*) guidance will apply in administering the program. The applicant whose proposal is selected for funding will receive a cooperative agreement award with FTA to be administered according to Circular 6100.1E. FTA will have substantial involvement in the administration of the cooperative agreement. FTA's role includes the right to participate in decisions to redirect and reprioritize project activities, goals, and deliverables.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants under this notice include the following:

- Providers of public transportation, including public transportation agencies, state or local government DOTs, and Federally recognized Native American tribes;
- Private for-profit and not-for-profit organizations, consultants, research consortia, and industry organizations;
- State, city, or local government entities, including multi-jurisdictional partnerships, and organizations such as Metropolitan Planning Organizations; or
- Institutions of higher education including large research universities, and technical and community colleges, particularly those with Minority Serving Institution status.

On the application form, eligible applicants are encouraged to identify one or more project partners with a substantial interest and involvement in the project to participate in the implementation of the project. If an application that involves such a partnership is selected for funding, the competitive selection process will be deemed to satisfy the requirement for a

competitive procurement under 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partnership will require FTA written approval, must be consistent with the scope of the approved project, and may necessitate a competitive procurement.

The applicant must be able to carry out the proposed agreement and procurements, if needed, with project partners in compliance with all applicable Federal, state, and local laws.

To be considered eligible, applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

2. Cost Sharing or Matching

The maximum Federal share of project costs under this program is limited to 80 percent. Applicants may seek a lower Federal contribution. The applicant must provide the non-Federal share of the net project cost in cash or in-kind, and must document in its application the source of the non-Federal match. Eligible sources of non-Federal match are detailed in FTA Circular 6100.1E.

3. Eligible Projects

This notice solicits applications for a project to analyze the available safety data from the NTD and other available datasets for current trends and safety issues with operator and rider assaults, including an assessment of data quality and accuracy reported to the NTD. A critical component of this project is close collaboration across industry stakeholders to identify and document current best practices, mitigation strategies used and their effectiveness. This research will inform the development of outreach materials and tools (virtual or physical) that can be used by transit agencies to implement risk mitigation strategies to reduce operator and rider assaults. As part of the project, FTA requires the project team to propose a pilot demonstration project, which FTA may approve for implementation in a Phase II, to showcase a comprehensive risk mitigation approach that could be implemented by transit operators to effectively reduce operator and rider assault incidents using information and lessons gathered from the research conducted in Phase I.

Applicants are encouraged to note the application of Safe Systems Approach strategies as appropriate. For more information on the DOT's Safe Systems Approach, please visit: What is a Safe System Approach? | US Department of Transportation (*https://www.transportation.gov/NRSS/SafeSystem*).

This effort seeks to harness Federal, local, and private sector investments to improve safety for transit workers and riders. As such, FTA seeks applications for a project that improves the current state of practice or builds on existing successful programs and partnership efforts.

Software products developed under this project will be subject to the provisions of FTA's Master Agreement, the latest version of which is available at *https://www.transit.dot.gov/grantee-resources/sample-fta-agreements/* and may be disseminated to public transit agencies for their use. Software developed under this program should be interoperable, adaptable, and secure. Further, the applicants should consider how the development effort could support the development or use of open standards, specifications, or protocols if the project involves software development.

It is FTA's intent to advance safety innovations that are of national significance and can provide benefit to transit agencies, cities, and communities across the United States. As such, applicants should consider how to structure development efforts to ensure research outputs are broadly relevant and can lead to adoption or use by other transit agencies or transportation providers.

D. Application and Submission Information

1. Address To Request Application

Applications must be submitted electronically through *Grants.gov.* General information for submitting applications through *Grants.gov* can be found at *www.transit.dot.gov/howtoapply.* A complete proposal submission consists of two forms: the SF–424 Application for Federal Assistance (available at *Grants.gov*) and the supplemental form for the FY 2023 TWRS NOFO (downloaded from *Grants.gov* or the FTA website at *https://www.transit.dot.gov/funding/grants/TWRS.* Failure to submit the information as requested can delay review or disqualify the application.

2. Content and Form of Application Submission

a. Proposal Submission

A complete proposal submission consists of two forms: (1) the SF–424 Application for Federal Assistance; and (2) the supplemental form for the FY 2023 Transit Worker and Rider Safety Best Practice Research NOFO. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. The application must include responses to all sections of the SF–424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in Section E of this notice.

FTA will accept only one supplemental form per SF–424 submission. Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support from key stakeholders, project budgets, visual aids, excerpts from relevant planning documents, or project narratives. Any supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or else it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, and description of areas served may be requested in varying degrees of detail on both the SF–424 and supplemental form. Applicants must complete all fields unless stated otherwise on the forms. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms and ensure that the Federal and local amounts specified are consistent.

b. Application Content

The SF–424 Application for Federal Assistance and the supplemental form will prompt applicants for the required information, including:

1. Applicant name.
2. Unique Entity ID (provided by SAM).
3. Key contact information (including name, address, email address, and phone).
4. Congressional district(s) where the project will take place.
5. Project information (including title, an executive summary, and type).
6. Information on areas served by the project including current state of public transportation and state of mobility in the area served if the application includes transit agencies as part of the project team.
7. A detailed description of the project and how it will (a) analyze the available datasets on operator and rider assaults for trends and issues, (b) an assessment of assault data

quality and accuracy reported to the NTD, (c) document and assess mitigation strategies and solutions and their effectiveness; (d) develop outreach materials and tools that can be used by the transit industry to implement mitigation strategies and solutions; (e) propose a pilot demonstration project to showcase and promote those solutions.

8. A description of the project implementation strategy.

9. A description of the approach to data and data access, including how the project will support the USDOT's public data access requirements.

10. Information on any project partners, their role, and anticipated contributions.

11. A description of the technical, legal, and financial capacity of the applicant and partners.

12. A detailed project budget, specifying Federal and local share.

13. A detailed project timeline.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in SAM before submitting an application; (2) provide a valid unique entity identifier (UEI) in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d). Applicants should reference 2 CFR 200.113, for more information. SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *https://www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Time on February 13, 2023. *Grants.gov* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *Grants.gov* scheduled maintenance and outage times are announced on the *Grants.gov* website. Deadlines will not be extended due to scheduled website maintenance.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *Grants.gov* with confirmation of successful transmission to *Grants.gov*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *Grants.gov* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) registration in SAM must be renewed annually, and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *Grants.gov* by the AOR to make submission.

5. Funding Restrictions

Funds available under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA issuing pre-award authority for selected projects.

Refer to Section C.3., Eligible Projects, for information on activities that are allowable. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E.

6. Other Submission Requirements

All applications must be submitted via the *Grants.gov* website. FTA does not accept applications on paper, by fax machine, email, or other means. For information on application submission requirements, please see Section D.1., Address to Request Application. If the applicant encounters system problems or technical difficulties using the *Grants.gov* website, the applicant should address those technical issues to *Grants.gov*.

E. Application Review Information

1. Criteria

Proposals will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate proposals based on the criteria described in this notice.

a. Proposal Team Subject Matter Expertise

FTA will evaluate the experience of the project team and any named project partners in the application. Applicants should clearly demonstrate the knowledge and expertise of the team in the subject matter of this NOFO, specifically in the areas of transit operations, transit safety, data analysis, the NTD and other relevant data sources, Safe Systems Approaches, development of outreach and marketing materials on best practices, involvement with knowledge transfer activities and leading research demonstration projects. Applicants are advised to submit information on any partner's qualifications and experience as part of the application. Entities who will be involved in the project but not named in the application will be required to be selected through a competitive procurement.

b. Project Implementation Strategy

Proposals will be evaluated based on the extent to which the applicant's proposed implementation plans, including all necessary project milestones and the overall project timeline, are reasonable and complete. FTA will consider the risks to project implementation, and the extent to which the project implementation strategy addresses these risks, including the capacity to implement the project within three months after award of the Cooperative Agreement; ability to complete the project, Phase I, within 24 months of award; and capacity to lead Phase II of the research project if it is approved. FTA will also consider if the project's implementation addresses how the project will support DOT's data collection, sharing policies and meeting the data management plan requirement (see below).

c. Technical, Legal, and Financial Capacity

Applicants must demonstrate the financial organizational capacity and managerial experience to successfully oversee and implement this proposed project. Applicants with outstanding legal, technical, or financial compliance issues from an FTA compliance review or FTA grant-related Single Audit finding must disclose and explain how corrective actions will mitigate negative impacts on the proposed project. FTA may review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project.

d. Planning and Partnerships

Applicants must identify all project partners and their specific roles. FTA will evaluate the extent to which the project contains strong, cohesive partnerships and the collaboration necessary to successfully implement the proposed project. Applications should describe how project partners plan to work collaboratively and should show evidence of strong commitment and cooperation among project partners through letters of support or agreements among the partners. For proposed projects that will require formal coordination, approvals, or permits from government agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

e. Local Financial Commitment

Applicants must identify the source of the non-Federal cost share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the non-Federal cost share as evidence of the applicant's financial commitment to the project. Additional consideration may be given to those projects with a higher non-Federal share of costs and for which non-Federal funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for the project, for example, by including a board resolution, letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project, or other documentation of the source of non-Federal funds.

2. Review and Selection Process

A technical evaluation committee will evaluate proposals based on the published evaluation criteria. Members of the technical evaluation committee may request additional information from applicants, if necessary. Based on the findings of the technical evaluation committee, FTA will determine the final selection of a single project, or none, for final award.

Prior to making an award, FTA is required to review and consider any information about the applicant in the Federal Awardee Performance and Integrity Information System (FAPIIS) accessible through SAM. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.206).

F. Federal Award Administration Information

1. Federal Award Notices

FTA will announce the final project selection on the FTA website.

2. Administrative and National Policy Requirements

a. Pre-Award Authority

At the time the project selection is announced, FTA may extend pre-award authority for the selected project. There is no blanket pre-award authority before announcement. FTA will issue specific guidance to the recipient regarding pre-award authority at the time of selection. FTA does not consider requests for pre-award authority for competitive funds until after projects are selected, and additional Federal requirements must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionments, Allocations and Program Information Notice at *https://www.transit.dot.gov.*

b. Cooperative Agreement Requirements

If selected, the awardee will apply for a cooperative agreement through FTA's Transit Award Management System (TrAMS). The successful applicant must be prepared to submit a final statement of work and complete the application in TrAMS within 60 days of notification of selection. The recipient must follow the requirements of FTA Circular 6100.1E. Technical assistance regarding these requirements is available from FTA.

c. Buy America

All capital procurements must comply with FTA's Buy America requirements (49 U.S.C. 5323(j)), which require that all iron, steel, and manufactured products be produced in the United States. In addition, any award made after May 14, 2022, must comply with the Build America, Buy America Act (BABA) (Pub. L. 117–58 §§ 70901–52). BABA provides that none of the funds provided under an award made pursuant to this notice may be used for a project unless all iron, steel, manufactured products, and construction materials are produced in the United States. FTA's Buy America requirements are consistent with BABA requirements for iron, steel, and manufactured products.

d. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital, or operating assistance that will award prime contracts exceeding $250,000 in FTA funds in a Federal fiscal year comply with the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). If an applicant also receives FTA planning, capital, or operating assistance, it should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting its overall DBE goal. Note, however, that projects including vehicle procurements remain subject to the DBE program regulations.

e. Standard Assurances

If an applicant receives an award, the applicant must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA award. The applicant acknowledges that it will be under a continuing obligation to comply with the terms and conditions of the agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The most recent Federal requirements will apply to the project unless FTA issues a written determination otherwise. The applicant must submit the most recent FTA Certifications and Assurances before receiving an award if

it does not have current certifications on file.

f. Data Management Plan

FTA-funded grant recipients must comply with the DOT Public Access Plan. FTA will assess the project's ability to consider, plan, budget for, and implement appropriate data management in accordance with Public Access (*https://doi.org/10.21949/1520559*) of data and corresponding outputs acquired or generated during the course of the project. The proposed data management will be used as an evaluation criterion. Such requirements will include, but are not limited to:

- providing at a minimum the data and corresponding outputs to: (1) reproduce significant results (whether positive or negative); (2) measure the outcomes or objectives of the project, as well as the NOFO; and (3) add potential value to future deployments or research and to support evidence-based policy or actions;
- developing a data management plan (*https://doi.org/10.21949/1520571*) (pre-award and post-award), providing relevant metadata (in a DCAT–US *https://resources.data.gov/resources/dcat-us/*) file, and, optionally, a discipline appropriate metadata standard file), and data documentation (README.txt files, data dictionaries, code books, supporting files, imputation tables, etc.);
- defaulting to open access when appropriate (exceptions include protecting personally identifiable information (PII), Indigenous data sovereignty (*https://www.gida-global.org/care*), or confidential business information (CBI));
- protecting personal identifiable information, intellectual property rights, and confidential business information;
- utilizing, when possible, open licenses and protecting DOT's non-exclusive copyright to data and corresponding outputs (*https://doi.org/10.21949/1520564*); and
- providing source code or tools necessary to analyze or transform the data.

Projects should implement data management best practices, including, but not limited to: implementation of published data specifications and standards (formal and informal); increasing data discoverability and data sharing; posting data in a timely fashion [1] on publicly accessible resources; and enabling interaction of systems, interoperability, and integration of data systems. A data management plan will be required as a deliverable within three (3) months of project award.

Definition: Data and Corresponding Outputs is defined for the purpose of this grant, and as consistent with Federal laws (including 2 CFR 200.315, as it relates to ''intangible property'') and the DOT Public Access Plan (*https://doi.org/10.21949/1520559*), as the recorded factual material commonly accepted in the scientific or technology community as necessary to validate findings, as may be textually represented in a publication or stored in a digital machine-readable format for further computational analysis. This term includes, but is not limited to, publications, data, data documentation, source code, and computer software documentation. This definition includes at a minimum the data required to validate or estimate performance, outcomes, or future impacts.

[1] The frequency of posting data will be determined in the post-award phase. For example, this might be near-real time, monthly, or quarterly depending on specific data set needs.

g. External Communications

The recipient must communicate with the FTA Project Manager prior to engaging in any external communications regarding the project. This includes any work developing news or magazine stories with media organizations, including print, video, online, or otherwise. Additionally, the FTA project manager must be notified if project information, including results and metrics, will be shared during a webinar or other presentation open to the public produced either by the recipient itself or another organization. The recipient should consult with the FTA Project Manager at the beginning of the agreement to discuss and plan any external communications about the project.

h. Software Provisions

Any software developed as a part of this solicitation will be subject to provisions of the version of FTA's Master Agreement in effect at the time of award and may be disseminated to public transit agencies for their use.

i. FTA Funds Reimbursement

If selected, awardees must disburse funds from their cooperative agreement using DOT's Delphi system. Drawdowns using ECHO are prohibited. FTA staff are available to assist awardees with gaining access and using the Delphi system.

j. Termination for Failure To Make Reasonable Progress

After providing written notice to the recipient of a project selected for funding, FTA may withdraw its support for the selected project (if a cooperative agreement has not yet been awarded) or suspend or terminate all or any part of the award if, among other reasons, the recipient has failed to make reasonable progress implementing the project. In particular, FTA may withdraw its support for a project or terminate an award agreement if:

a. A recipient has not completed its application for funding in TrAMS within 60 days of the date FTA announces project selection;

b. A recipient has not begun its research project within one year after funding was awarded in TrAMS;

c. A recipient has not delivered a project final report to FTA within one year of completing its research project.

The Federal Government may terminate an award at any time for any reason described in 2 CFR 200.340 or the FTA Master Agreement.

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system. A successful applicant should include any goals, targets, and indicators referenced in their application in the Executive Summary of the TrAMS application.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceed $10,000,000 for any time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact Roy Chen, in the FTA Office of Infrastructure & Asset Innovation, by phone at 202–366–0462, or by email at *royweishun.chen@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications, if needed, on FTA's website at *https://www.transit.dot.gov/funding/grants/TWRS.* To ensure applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA directly, rather than

through intermediaries or third parties, with questions. FTA staff also may conduct briefings on the FY 2023 competitive grants selection and award process upon request.

For issues with *Grants.gov*, please contact *Grants.gov* by phone at 1–800–518–4726 or by email at *support@grants.gov.*

H. Other Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–27197 Filed 12–14–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On December 9, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. ANDREEV, Pavel Viktorovich (Cyrillic: АНДРЕЕВ, Павел Викторович), Moscow, Russia; DOB 06 Feb 1980; POB St. Petersburg, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249 (Apr. 15, 2021) (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

1. BORISOV, Igor Borisovich (Cyrillic: БОРИСОВ, Игорь Борисович), Moscow, Russia; DOB 03 Jun 1964; POB Perm, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. BUDARINA, Natalya Alekseevna (Cyrillic: БУДАРИНА, Наталья Алексеевна) (a.k.a. BUDARINA, Natalia), Moscow, Russia; DOB 24 Jul 1980; POB Magdeburg, Germany; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. BULAEV, Nikolay Ivanovich (Cyrillic: БУЛАЕВ, Николай Иванович), Moscow, Russia; DOB 01 Sep 1949; POB Kazachya Sloboda, Shatsky district, Ryazan Oblast, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. EBZEEV, Boris Safarovich (Cyrillic: ЭБЗЕЕВ, Борис Сафарович), Moscow, Russia; DOB 25 Feb 1950; POB Jangi-Jer, Kyrgyzstan; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

5. KHAIMOURZINA, Elmira Abdulbarievna (Cyrillic: ХАЙМУРЗИНА, Эльмира Абдулбариевна) (a.k.a. KHAIMURZINA, Elmira), Moscow, Russia; DOB 05 Apr 1974; POB Arkhangelka, Kazakhstan; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

6. KOLYUSHIN, Yevgeny Ivanovich (Cyrillic: КОЛЮШИН, Евгений Иванович), Moscow, Russia; DOB 08 Oct 1947; POB Cherepovets, Vologda region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

7. KURDIUMOV, Aleksandr Borisovich (Cyrillic: КУРДЮМОВ, Александр Борисович) (a.k.a. KURDYUMOV, Alexander), Moscow, Russia; DOB 26 Nov 1967; POB Nizhny Novgorod, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

8. LEVICHEV, Nikolay Vladimirovich (Cyrillic: ЛЕВИЧЕВ, Николай Владимирович), Moscow, Russia; DOB 28 May 1953; POB St. Petersburg, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

9. LOPATIN, Anton Igorevich (Cyrillic: ЛОПАТИН, Антон Игоревич), Moscow, Russia; DOB 04 Sep 1974; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

10. MARKINA, Liudmila Leonidovna (Cyrillic: МАРКИНА, Людмила Леонидовна) (a.k.a. MARKINA, Lyudmila), Moscow, Russia; DOB 15 Apr 1979; POB Khotynets, Khotynets district, Oryol region, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

11. MAZUREVSKII, Konstantin Sergeevich (Cyrillic: МАЗУРЕВСКИЙ, Константин Сергеевич) (a.k.a. MAZUREVSKY, Konstantin), Moscow, Russia; DOB 27 Apr 1981; POB Rassukha, Unechsky district, Bryansk region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

12. PAMFILOVA, Ella Aleksandrovna (Cyrillic: ПАМФИЛОВА, Элла Александровна), Moscow, Russia; DOB 12 Sep 1953; POB Olmaliq, Uzbekistan; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

13. SHEVCHENKO, Yevgeny Aleksandrovich (Cyrillic: ШЕВЧЕНКО, Евгений Александрович) (a.k.a. SHEVCHENKO, Evgeni), Moscow, Russia; DOB 09 Sep 1972; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

14. SHUTOV, Andrey Yurievich (Cyrillic: ШУТОВ, Андрей Юрьевич), Moscow, Russia; DOB 09 Mar 1963; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

15. KIM, Yevgeniy Radionovich, Moscow, Russia; DOB 01 Jul 1979; POB Tashkent, Uzbekistan; nationality Russia; Gender Male; National ID No. 4508488884 (Russia) issued 18 May 2006 (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

16. NESTEROV, Oleg Yuryevich, Mariupol, Ukraine; DOB 13 Aug 1980; POB Staroderevyankovskaya, Kanevskiy Rayon, Krasnodarskiy Kray, Russia; nationality Russia; Gender Male; National ID No. 9617700543 (Russia) issued 21 Feb 2017 (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities

that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

17. MURATOV, Aleksey Valentinovich (Cyrillic: МУРАТОВ, Алексей Валентинович) (a.k.a. MURATOV, Alexei), Moscow, Russia; Donetsk, Ukraine; DOB 17 Feb 1978; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209 (individual) [UKRAINE-EO13660] [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

18. SEREDA, Marina Konstantinovna, Donetsk Oblast, Ukraine; 27 Anapskoe Highway, Apartment 5, Novorossiysk, Krasnodar Region 353907, Russia; DOB 17 Jul 1985; POB Novorossiysk, Russia; nationality Russia; Gender Female; National ID No. 0305911404 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

Entity

1. CENTRAL ELECTION COMMISSION OF THE RUSSIAN FEDERATION (Cyrillic: ЦЕНТРАЛЬНАЯ ИЗБИРАТЕЛЬНАЯ КОМИСССИЯ РОССИЙСКОЙ ФЕДЕРАЦИИ) (a.k.a. TSENTRALNAYA IZBIRATELNAYA KOMISSIYA ROSSIISKOI FEDERATSII; a.k.a. TSENTRIZBIRKOM (Cyrillic: ЦЕНТРИЗБИРКОМ); a.k.a. TSIK ROSSII (Cyrillic: ЦИК РОССИИ)), Bolshoy Cherkassky Pereulok, Building 9, Moscow 109012, Russia; Organization Established Date 20 Dec 1993; Target Type Government Entity; Tax ID No. 7710010990 (Russia); Government Gazette Number 00065650 (Russia); Registration Number 1027700466640 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iv) of E.O. 14024 for being a political subdivision, agency, or instrumentality of the Government of the Russian Federation.

Dated: December 9, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–27190 Filed 12–14–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 9, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. ZHUO, Xinrong (a.k.a. XINRONG, Zhuo; a.k.a. ZHUO, Longxiong), China; Flat B, 27th Floor, Ko On Mansion, Taikoo Shing, Hong Kong, China; DOB 10 Nov 1964; POB Fuzhou, China; nationality Hong Kong; Gender Male; Passport D00579743 (Hong Kong) issued 28 Apr 2018 expires 28 Apr 2025; National ID No. R4016407 (Hong Kong) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 FR 60839, 3 CFR, 2018 Comp., p. 399 (E.O. 13818) for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

2. LI, Zhenyu (Chinese Simplified: 励振羽) (a.k.a. ZHENYU, Li), Dalian, China; DOB 07 Jun 1965; POB Dandong, China; nationality China; Gender Male; Passport E63646378 (China) issued 27 Nov 2015 expires 26 Nov 2025; National ID No. 210211196506075832 (China) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

Entities

1. DALIAN OCEAN FISHING COMPANY LIMITED (Chinese Simplified: 大连远洋渔业金枪鱼钓有限公司) (a.k.a. DALIAN OCEAN FISHERY TUNA FISHING CO., LTD.; a.k.a. DALIAN OCEAN FISHING CO., LTD.), 34th Floor, Number 38, Zhangjiang Road, Zhongshan District, Dalian, Liaoning, China; Organization Type: Marine Fishing; Identification Number IMO 4212374; Unified Social Credit Code (USCC) 912102007169879128 (China) [GLOMAG] (Linked To: LI, Zhenyu). Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, LI ZHENYU, a person whose property and interests in property are blocked pursuant to E.O. 13818.

2. FUJIAN HEYUE MARINE FISHING DEVELOPMENT CO., LTD. (Chinese Simplified: 福建和悦海洋渔业发展有限公司), Room G433, 4th Floor, Science and Technology Development Center Building, No. 83 Junzhu Road, Mawei District, Fuzhou, China; Organization Established Date 27 Jan 2015; Organization Type: Activities of holding companies; Unified Social Credit Code (USCC) 913501003157013038 (China) [GLOMAG] (Linked To: PINGTAN GUANSHENG OCEAN FISHING CO., LTD.).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly,

PINGTAN GUANSHENG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818.

3. FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD. (Chinese Simplified: 福建省平潭县远洋渔业集团有限公司) (a.k.a. FUJIAN PINGTAN COUNTY OCEAN; a.k.a. FUJIAN PINGTAN COUNTY OCEAN FISHERY GROUP CO LTD; a.k.a. PINGTAN FISHING), Room 2-25A, Building 1#, No. 27, Huli Road, Mawei District, Fujian, Fuzhou 350015, China; Organization Established Date 27 Feb 1998; Identification Number IMO 4235151; Unified Social Credit Code (USCC) 913501057051504472 (China) [GLOMAG] (Linked To: FUJIAN HEYUE MARINE FISHING DEVELOPMENT CO., LTD.).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, FUJIAN HEYUE MARINE FISHING DEVELOPMENT CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818.

4. FUZHOU HONGLONG OCEAN FISHING CO., LTD. (Chinese Simplified: 福州宏龙海洋水产有限公司) (a.k.a. FUZHOU HONG LONG OCEAN FISHERY CO. LTD.; a.k.a. FUZHOU HONGLONG OCEAN FISHING), Room 427, 4th Floor, Industrial Plant, Building No. 2, No. 2 Changtian Industry Park, Changsheng Road, Chang'an Investment Zone, Fuzhou Development Zone, Fujian, China; Identification Number IMO 5195011; Unified Social Credit Code (USCC) 91350100628538981P (China) [GLOMAG] (Linked To: PINGTAN MARINE ENTERPRISE LTD.).

   Designated pursuant to section 1(a)(iii)(A)(2) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, PINGTAN MARINE ENTERPRISE LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818.

5. HEROIC TREASURE LIMITED, Virgin Islands, British; Organization Type: Activities of holding companies [GLOMAG] (Linked To: ZHUO, Xinrong).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, XINRONG ZHUO, a person whose property and interests in property are blocked pursuant to E.O. 13818.

6. MARS HARVEST CO., LTD., Virgin Islands, British; Building 26, Mingyang Tianxia, No. 1 Yuquan Road, Fuzhou, Fujian, China; Organization Type: Activities of holding companies [GLOMAG] (Linked To: ZHUO, Xinrong).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, XINRONG ZHUO, a person whose property and interests in property are blocked pursuant to E.O. 13818.

7. MERCHANT SUPREME CO., LTD., Tortola, Virgin Islands, British; Organization Established Date 25 Jun 2012; Organization Type: Activities of holding companies [GLOMAG] (Linked To: PINGTAN MARINE ENTERPRISE LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, PINGTAN MARINE ENTERPRISE LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818.

8. PINGTAN GUANSHENG OCEAN FISHING CO., LTD. (Chinese Simplified: 平潭冠昇海洋水产有限公司), 4th Floor, No. 137, Lianhua Village, Hongshan Neighborhood Committee, Tancheng Town, Pingtan County, Fuzhou, Fujian, China; Organization Established Date 12 Oct 2012; Organization Type: Activities of holding companies; Unified Social Credit Code (USCC) 91350128MA34593X7G (China) [GLOMAG] (Linked To: PRIME CHEER CORPORATION LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, PRIME CHEER CORPORATION LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818.

9. PINGTAN MARINE ENTERPRISE LTD., Cayman Islands; 18-19/F, Zhongshan Building A, No. 154 Hudong Road, Fuzhou 350001, China; Organization Established Date 18 Jan 2010; Organization Type: Marine Fishing; Equity Ticker PME US; ISIN KYG7114V1023 [GLOMAG] (Linked To: ZHUO, Xinrong).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, XINRONG ZHUO, a person whose property and interests in property are blocked pursuant to E.O. 13818.

10. PRIME CHEER CORPORATION LTD. (Chinese Traditional: 慶卓有限公司; Chinese Simplified: 庆卓有限公司 (中国香港)), Suites 5201-03, 52/F, The Center, Central, Hong Kong, China; Organization Established Date 03 May 2012; Organization Type: Activities of holding companies; Company Number 1739277 (Hong Kong) [GLOMAG] (Linked To: MERCHANT SUPREME CO., LTD.).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, MERCHANT SUPREME CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818.

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On December 9, 2022, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below.

Vessels

1. FU YUAN YU 7601 Fishing Vessel China flag; Vessel Registration Identification IMO 9891476 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

2. FU YUAN YU 7602 Fishing Vessel China flag; Vessel Registration Identification IMO 9891488 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

3. FU YUAN YU 7603 Fishing Vessel China flag; Vessel Registration Identification IMO 9891490 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

4. FU YUAN YU 7861 Fishing Vessel China flag; Vessel Registration Identification IMO 9828663 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN

COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

5. FU YUAN YU 7862 Fishing Vessel China flag; Vessel Registration Identification IMO 9828675 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

6. FU YUAN YU 7863 Fishing Vessel China flag; Vessel Registration Identification IMO 9828699 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

7. FU YUAN YU 7864 Fishing Vessel China flag; Vessel Registration Identification IMO 9828687 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

8. FU YUAN YU 7868 Fishing Vessel China flag; Vessel Registration Identification IMO 9872585 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

9. FU YUAN YU 7869 Fishing Vessel China flag; Vessel Registration Identification IMO 9872602 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

10. FU YUAN YU 7870 Fishing Vessel China flag; Vessel Registration Identification IMO 9874131 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

11. FU YUAN YU 7871 Fishing Vessel China flag; Vessel Registration Identification IMO 9874155 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

12. FU YUAN YU 7872 Fishing Vessel China flag; Vessel Registration Identification IMO 9874064 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

13. FU YUAN YU 7873 Fishing Vessel China flag; Vessel Registration Identification IMO 9874167 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

14. FU YUAN YU 7874 Fishing Vessel China flag; Vessel Registration Identification IMO 9879715 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

15. FU YUAN YU 7875 Fishing Vessel China flag; Vessel Registration Identification IMO 9879727 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

16. FU YUAN YU 7876 Fishing Vessel China flag; Vessel Registration Identification IMO 8537097 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

17. FU YUAN YU 7877 Fishing Vessel China flag; Vessel Registration Identification IMO 8537102 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

18. FU YUAN YU 7882 Fishing Vessel China flag; Vessel Registration Identification IMO 9828754 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

19. FU YUAN YU 7883 Fishing Vessel China flag; Vessel Registration Identification IMO 9828766 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

20. FU YUAN YU 7886 Fishing Vessel China flag; Vessel Registration Identification IMO 9842293 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

21. FU YUAN YU 7887 Fishing Vessel China flag; Vessel Registration Identification IMO 9842308 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

22. FU YUAN YU 7890 Fishing Vessel China flag; Vessel Registration Identification IMO 9878761 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

23. FU YUAN YU 7891 Fishing Vessel China flag; Vessel Registration Identification IMO 9878773 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are

blocked pursuant to E.O. 13818, has an interest.

24. FU YUAN YU 7892 Fishing Vessel China flag; Vessel Registration Identification IMO 9879686 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

25. FU YUAN YU 7893 Fishing Vessel China flag; Vessel Registration Identification IMO 9878785 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

26. FU YUAN YU 7894 Fishing Vessel China flag; Vessel Registration Identification IMO 9871232 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

27. FU YUAN YU 7895 Fishing Vessel China flag; Vessel Registration Identification IMO 9871244 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

28. FU YUAN YU 7896 Fishing Vessel China flag; Vessel Registration Identification IMO 9872224 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

29. FU YUAN YU 7897 Fishing Vessel China flag; Vessel Registration Identification IMO 9872262 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

30. FU YUAN YU 7898 Fishing Vessel China flag; Vessel Registration Identification IMO 9872274 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

31. FU YUAN YU 7899 Fishing Vessel China flag; Vessel Registration Identification IMO 9872286 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

32. FU YUAN YU 8672 Fishing Vessel China flag; Vessel Registration Identification IMO 9869291 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

33. FU YUAN YU 8673 Fishing Vessel China flag; Vessel Registration Identification IMO 9869473 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

34. FU YUAN YU 8674 Fishing Vessel China flag; Vessel Registration Identification IMO 9869485 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

35. FU YUAN YU 8675 Fishing Vessel China flag; Vessel Registration Identification IMO 9869497 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

36. FU YUAN YU 8676 Fishing Vessel China flag; Vessel Registration Identification IMO 9870123 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

37. FU YUAN YU 8677 Fishing Vessel China flag; Vessel Registration Identification IMO 9870238 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

38. FU YUAN YU 8678 Fishing Vessel China flag; Vessel Registration Identification IMO 9870240 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

39. FU YUAN YU YUN 995 Fish Carrier China flag; Vessel Registration Identification IMO 9887152 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

40. FU YUAN YU YUN 997 Fish Carrier China flag; Vessel Registration Identification IMO 9887853 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

41. FU YUAN YU 005 Fishing Vessel China flag; Vessel Registration Identification IMO 7815246 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

42. FU YUAN YU 008 Fishing Vessel China flag; Vessel Registration Identification IMO 8403698 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

43. FU YUAN YU 557 Fishing Vessel China flag; Vessel Registration Identification

IMO 8820509 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

44. FU YUAN YU 558 Fishing Vessel China flag; Vessel Registration Identification IMO 9031947 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

45. FU YUAN YU 559 Fishing Vessel China flag; Vessel Registration Identification IMO 9016571 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

46. FU YUAN YU 7865 Fishing Vessel China flag; Vessel Registration Identification IMO 9828704 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

47. FU YUAN YU 7866 Fishing Vessel China flag; Vessel Registration Identification IMO 9828716 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

48. FU YUAN YU 7884 Fishing Vessel China flag; Vessel Registration Identification IMO 9842279 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

49. FU YUAN YU 7885 Fishing Vessel China flag; Vessel Registration Identification IMO 9842281 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

50. FU YUAN YU 7888 Fishing Vessel China flag; Vessel Registration Identification IMO 9872561 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

51. FU YUAN YU 7889 Fishing Vessel China flag; Vessel Registration Identification IMO 9872573 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

52. FU YUAN YU 7900 Fishing Vessel China flag; Vessel Registration Identification IMO 9888273 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

53. FU YUAN YU 7901 Fishing Vessel China flag; Vessel Registration Identification IMO 9888285 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

54. FU YUAN YU 7902 Fishing Vessel China flag; Vessel Registration Identification IMO 9888297 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

55. FU YUAN YU 8635 Fishing Vessel China flag; Vessel Registration Identification IMO 9934503 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

56. FU YUAN YU 8636 Fishing Vessel China flag; Vessel Registration Identification IMO 9933717 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

57. FU YUAN YU 8637 Fishing Vessel China flag; Vessel Registration Identification IMO 9933729 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

58. FU YUAN YU 8638 Fishing Vessel China flag; Vessel Registration Identification IMO 9933731 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

59. FU YUAN YU 8639 Fishing Vessel China flag; Vessel Registration Identification IMO 9934515 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

60. FU YUAN YU 8640 Fishing Vessel China flag; Vessel Registration Identification IMO 9934527 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

61. FU YUAN YU 8641 Fishing Vessel China flag; Vessel Registration Identification IMO 9934539 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

62. FU YUAN YU 8642 Fishing Vessel China flag; Vessel Registration Identification IMO 9934541 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

63. FU YUAN YU 8643 Fishing Vessel China flag; Vessel Registration Identification IMO 9934553 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

64. FU YUAN YU 8644 Fishing Vessel China flag; Vessel Registration Identification IMO 9934565 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

65. FU YUAN YU 8645 Fishing Vessel China flag; Vessel Registration Identification IMO 9934577 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

66. FU YUAN YU 8646 Fishing Vessel China flag; Vessel Registration Identification

IMO 9934589 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

67. FU YUAN YU 8647 Fishing Vessel China flag; Vessel Registration Identification IMO 9940497 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

68. FU YUAN YU 8648 Fishing Vessel China flag; Vessel Registration Identification IMO 9940538 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

69. FU YUAN YU 8649 Fishing Vessel China flag; Vessel Registration Identification IMO 9940540 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

70. FU YUAN YU 8650 Fishing Vessel China flag; Vessel Registration Identification IMO 9940552 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

71. FU YUAN YU 8651 Fishing Vessel China flag; Vessel Registration Identification IMO 9940576 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

72. FU YUAN YU 8652 Fishing Vessel China flag; Vessel Registration Identification IMO 9940590 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

73. FU YUAN YU 8653 Fishing Vessel China flag; Vessel Registration Identification IMO 9940617 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

74. FU YUAN YU 8654 Fishing Vessel China flag; Vessel Registration Identification IMO 9940629 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

75. FU YUAN YU 8660 Fishing Vessel China flag; Vessel Registration Identification IMO 9870111 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

76. FU YUAN YU 8661 Fishing Vessel China flag; Vessel Registration Identification IMO 9870587 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

77. FU YUAN YU 8662 Fishing Vessel China flag; Vessel Registration Identification IMO 9870599 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

78. FU YUAN YU 8695 Fishing Vessel China flag; Vessel Registration Identification IMO 9916692 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

79. FU YUAN YU 8696 Fishing Vessel China flag; Vessel Registration Identification IMO 9916654 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

80. FU YUAN YU 8697 Fishing Vessel China flag; Vessel Registration Identification IMO 9916707 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

81. FU YUAN YU 8698 Fishing Vessel China flag; Vessel Registration Identification IMO 9916721 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

82. FU YUAN YU F30 Refrigerated Cargo Ship China flag; Vessel Registration Identification IMO 9096507 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

83. FU YUAN YU F91 Refrigerated Cargo Ship China flag; Vessel Registration Identification IMO 8414295 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

84. FU YUAN YU YUN 991 Fish Carrier China flag; Vessel Registration Identification IMO 9920954 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

85. FU YUAN YU YUN 993 Fish Carrier China flag; Vessel Registration Identification IMO 9897066 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

86. HONG FENG 1 HAO Fish Carrier China flag; Vessel Registration Identification IMO 9756573 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

87. MIN FUZHOU YU F009 Fish Carrier China flag; Vessel Registration Identification IMO 8994013 (vessel) [GLOMAG] (Linked To: FUZHOU HONGLONG OCEAN FISHING CO., LTD.).

Identified as property in which FUZHOU HONGLONG OCEAN FISHING CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

88. FU YUAN YU 7604 Fishing Vessel China flag; Vessel Registration Identification IMO 9891505 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

89. FU YUAN YU 7605 Fishing Vessel China flag; Vessel Registration Identification IMO 9891608 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

90. FU YUAN YU 7606 Fishing Vessel China flag; Vessel Registration Identification IMO 9891610 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

91. FU YUAN YU 7611 Fishing Vessel China flag; Vessel Registration Identification IMO 9896294 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

92. FU YUAN YU 7612 Fishing Vessel China flag; Vessel Registration Identification IMO 9896309 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

93. FU YUAN YU 7613 Fishing Vessel China flag; Vessel Registration Identification IMO 9896323 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

94. FU YUAN YU 7614 Fishing Vessel China flag; Vessel Registration Identification IMO 9896335 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

95. FU YUAN YU 7615 Fishing Vessel China flag; Vessel Registration Identification IMO 9896347 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

96. FU YUAN YU 7616 Fishing Vessel China flag; Vessel Registration Identification IMO 9896361 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

97. FU YUAN YU 7617 Fishing Vessel China flag; Vessel Registration Identification IMO 9896373 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

98. FU YUAN YU 7618 Fishing Vessel China flag; Vessel Registration Identification IMO 9896397 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

99. FU YUAN YU 7619 Fishing Vessel China flag; Vessel Registration Identification IMO 9896402 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

100. FU YUAN YU 7620 Fishing Vessel China flag; Vessel Registration Identification IMO 9914577 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

101. FU YUAN YU 7621 Fishing Vessel China flag; Vessel Registration Identification IMO 9914589 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

102. FU YUAN YU 7622 Fishing Vessel China flag; Vessel Registration Identification IMO 9914591 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

103. FU YUAN YU 7624 Fishing Vessel China flag; Vessel Registration Identification IMO 9914606 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

104. FU YUAN YU 7625 Fishing Vessel China flag; Vessel Registration Identification IMO 9914723 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

105. FU YUAN YU 7626 Fishing Vessel China flag; Vessel Registration Identification IMO 9914735 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

106. FU YUAN YU 7627 Fishing Vessel China flag; Vessel Registration Identification IMO 9914747 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

107. FU YUAN YU 7628 Fishing Vessel China flag; Vessel Registration Identification IMO 9914759 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

108. FU YUAN YU 7629 Fishing Vessel China flag; Vessel Registration Identification IMO 9914761 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

109. FU YUAN YU 7630 Fishing Vessel China flag; Vessel Registration Identification IMO 9914785 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

110. FU YUAN YU 8679 Fishing Vessel China flag; Vessel Registration Identification IMO 9892365 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

111. FU YUAN YU 8680 Fishing Vessel China flag; Vessel Registration Identification IMO 9892377 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

112. FU YUAN YU 8681 Fishing Vessel China flag; Vessel Registration Identification IMO 9893137 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

113. FU YUAN YU 8682 Fishing Vessel China flag; Vessel Registration Identification IMO 9893149 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

114. FU YUAN YU 8683 Fishing Vessel China flag; Vessel Registration Identification 9894387 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

115. FU YUAN YU 8684 Fishing Vessel China flag; Vessel Registration Identification IMO 9894492 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

116. FU YUAN YU 8685 Fishing Vessel China flag; Vessel Registration Identification IMO 9894507 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

117. FU YUAN YU 8686 Fishing Vessel China flag; Vessel Registration Identification IMO 9894399 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

118. FU YUAN YU 8687 Fishing Vessel China flag; Vessel Registration Identification IMO 9894519 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

119. FU YUAN YU 8688 Fishing Vessel China flag; Vessel Registration Identification IMO 9899052 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

120. FU YUAN YU 8689 Fishing Vessel China flag; Vessel Registration Identification IMO 9899064 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

121. FU YUAN YU 8690 Fishing Vessel China flag; Vessel Registration Identification IMO 9899076 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

122. FU YUAN YU 8691 Fishing Vessel China flag; Vessel Registration Identification IMO 9899088 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

123. FU YUAN YU 8692 Fishing Vessel China flag; Vessel Registration Identification IMO 9899105 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

124. FU YUAN YU 8693 Fishing Vessel China flag; Vessel Registration Identification IMO 9899117 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

125. FU YUAN YU YUN 992 Fish Carrier China flag; Vessel Registration Identification IMO 9910909 (vessel) [GLOMAG] (Linked To: FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD.).

Identified as property in which FUJIAN PROVINCIAL PINGTAN COUNTY OCEAN FISHING GROUP CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

126. LONG XING 601 Fishing Vessel China flag; Vessel Registration Identification IMO 8828329 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

127. LONG XING 602 Fishing Vessel China flag; Vessel Registration Identification IMO 8011055 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

128. LONG XING 603 Fishing Vessel China flag; Vessel Registration Identification IMO 7416349 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

129. LONG XING 605 Fishing Vessel China flag; Vessel Registration Identification IMO 8682490 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

130. LONG XING 606 Fishing Vessel China flag; Vessel Registration Identification IMO 8682505 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

131. LONG XING 607 Fishing Vessel China flag; Vessel Registration Identification IMO 8682517 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

132. LONG XING 608 Fishing Vessel China flag; Vessel Registration Identification IMO 8682529 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

133. LONG XING 609 Fishing Vessel China flag; Vessel Registration Identification IMO 9004449 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

134. LONG XING 610 Fishing Vessel China flag; Vessel Registration Identification IMO 8713421 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

135. LONG XING 611 Fishing Vessel China flag; Vessel Registration Identification IMO 9037678 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

136. LONG XING 612 Fishing Vessel China flag; Vessel Registration Identification IMO 9038294 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

137. LONG XING 621 Fishing Vessel China flag; Vessel Registration Identification IMO 8909769 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

138. LONG XING 622 Fishing Vessel China flag; Vessel Registration Identification IMO 8915158 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

139. LONG XING 623 Fishing Vessel China flag; Vessel Registration Identification IMO 8910976 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

140. LONG XING 625 Fishing Vessel China flag; Vessel Registration Identification IMO 9036777 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

141. LONG XING 626 Fishing Vessel China flag; Vessel Registration Identification IMO 9031935 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

142. LONG XING 627 Fishing Vessel China flag; Vessel Registration Identification IMO 9016258 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

143. LONG XING 628 Fishing Vessel China flag; Vessel Registration Identification IMO 9016246 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

144. LONG XING 629 Fishing Vessel China flag; Vessel Registration Identification IMO 8687268 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

145. LONG XING 630 Fishing Vessel China flag; Vessel Registration Identification IMO 8687270 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

146. LONG XING 635 Fishing Vessel China flag; Vessel Registration Identification IMO 8648145 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

147. LONG XING 636 Fishing Vessel China flag; Vessel Registration Identification IMO 8648157 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

148. LONG XING 637 Fishing Vessel China flag; Vessel Registration Identification IMO 8648169 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

149. LONG XING 638 Fishing Vessel China flag; Vessel Registration Identification IMO 8648171 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

150. LONG XING 801 Fishing Vessel China flag; Vessel Registration Identification IMO 8529442 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

151. LONG XING 802 Fishing Vessel China flag; Vessel Registration Identification IMO 8529428 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

152. TIAN XIANG 16 Fishing Vessel China flag; Vessel Registration Identification IMO 8947553 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

153. TIAN XIANG 18 Fishing Vessel China flag; Vessel Registration Identification IMO 8603690 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

154. TIAN XIANG 7 Fishing Vessel China flag; Vessel Registration Identification IMO 8407802 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

155. TIAN XIANG 8 Fishing Vessel China flag; Vessel Registration Identification IMO 8430562 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

156. TIAN YU 7 Fishing Vessel China flag; Vessel Registration Identification IMO 8651283 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

157. TIAN YU 8 Fishing Vessel China flag; Vessel Registration Identification IMO 8651295 (vessel) [GLOMAG] (Linked To: DALIAN OCEAN FISHING COMPANY LIMITED).

Identified as property in which DALIAN OCEAN FISHING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13818, has an interest.

Dated: December 9, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–27191 Filed 12–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On December 9, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. KEITA, Karim, Cote d Ivoire; Sebenicoro, Bamako, Mali; DOB 31 Aug 1979; POB Paris, France; nationality Mali; Gender Male; Passport DA0002236 (Mali) issued 20 Dec 2018 expires 19 Dec 2023; National ID No. 179FR920098004 D (Mali) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," (E.O. 13818) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. CASTRO RAMIREZ, Conan Tonathiu (a.k.a. CASTRO RAMIREZ, Conan; a.k.a. CASTRO, Conan), Antiguo Cuscatlan, La Libertad, El Salvador; DOB 31 May 1978; alt. DOB 30 May 19s78; POB San Salvador, El Salvador; nationality El Salvador; Gender Male; Passport C01141422 (El Salvador) expires 26 Jan 2027; alt. Passport DA000506 (El Salvador) expires 18 Sep 2024; Salvadoran Presidential Legal Secretary (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

3. CASTRO, Oscar Rolando (a.k.a. CASTRO, Ronaldo), El Salvador; DOB 22 Apr 1973; POB Santa Elena, El Salvador; nationality El Salvador; Gender Male; Passport DA000293 (El Salvador) expires 10 Jun 2024; National ID No. 007591947 (El Salvador); Salvadoran Minister of Labor (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

4. CHANG NAVARRO, Luis Alfonso (a.k.a. CHANG, Luis), Guatemala; DOB 15 Mar 1978; POB Guatemala; nationality Guatemala; Gender Male; Passport 222977132

(Guatemala) expires 21 May 2022; National ID No. 2229 77132 0101 (Guatemala) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

5. RODRIGUEZ REYES, Allan Estuardo (a.k.a. RODRIGUEZ, Alan; a.k.a. RODRIGUEZ, Allan), San Lucas, Guatemala; DOB 19 Oct 1981; POB Guatemala; nationality Guatemala; Gender Male; Passport F5573390 (Guatemala) expires 31 Aug 2021; National ID No. 2754422680101 (Guatemala) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

6. VARGAS MORALES, Jorge Estuardo (a.k.a. VARGAS, Jorge), Kilometro 19.5 Carretera A Fraijanes, Lote 69A, Guatemala City, Guatemala; DOB 22 Aug 1973; POB Guatemala; nationality Guatemala; Gender Male; Passport 223273090 (Guatemala) expires 24 Oct 2022; National ID No. 2232730900101 (Guatemala); Guatemalan Congressman (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

7. QUIBOLOY, Apollo Carreon, Davao, Philippines; DOB 25 Apr 1950; alt. DOB 25 Apr 1947; POB Philippines; nationality Philippines; Gender Male (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(A) of E.O. 13818 for being a foreign person who is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse.

8. CONDE, Alpha, Turkey; DOB 04 Mar 1938; POB Boke, Guinea; nationality Guinea; Gender Male; Passport D00003001 (Guinea) expires 13 Sep 2023 (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

9. WU, Yingjie (Chinese Simplified: 吴英杰), China; DOB Dec 1956; POB Changyi County, Shandong Province, China; nationality China; Gender Male (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(A) of E.O. 13818 for being a foreign person who is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse.

10. ZHANG, Hongbo (Chinese Simplified: 张洪波), China; DOB Mar 1965; POB Xuanhan County, Sichuan Province, China; nationality China; Gender Male; Director of the Tibetan Public Security Bureau (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

11. JAVIDAN, Ali Akbar (Arabic: علی اکبر جاویدان), Iran; DOB 21 Mar 1967; POB Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; LEF Commander for Kermanshah Province (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

12. KARAM AZIZI, ALLAH (Arabic: الله کرم عزیزی), Karaj, Iran; DOB 22 Jun 1976; POB Mamasani, Fars Province, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 2391217552 (Iran); Warden of Rajaee Shahr Prison (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

13. KOUCHAKZAEI, Ebrahim (Arabic: ابراهیم کوچکزایی) (a.k.a. KOOCHAK ZAIE, Ebrahim; a.k.a. KOUCHEKZAEI, Ebrahim; a.k.a. KUCHKZA'I, Ebrahim Mohammad), Iran; DOB 1963 to 1964; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; LEF Colonel (individual) [IRAN-HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

   Designated pursuant to section 1(a)(ii)(C) of Executive Order 13553 of September 28, 2010, "Blocking Property of Certain Persons With Respect To Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions" (E.O. 13553) for having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13553.

14. KIM, Myong Chol (a.k.a. KIM, Myo'ng-Ch'o'l), Paris, France; DOB 12 May 1972; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport 836210080 (Korea, North) expires 14 May 2021 (individual) [DPRK3] (Linked To: SEK STUDIO).

    Designated pursuant to Section 2(a)(vii) of Executive Order 13722 of March 15, 2016, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" (E.O. 13722) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

15. JADHAV, Deepak (a.k.a. JADHAV, Deepak Subhash), 203 Topaz Sai Ram Manor, Apartment Yosufguda, Hyderabad 500045, India; DOB 11 Dec 1976; POB Dombivli Maharashtra, India; nationality India; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Passport U8554908 (India) expires 12 Jan 2031 (individual) [DPRK3] (Linked To: SEK STUDIO).

    Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

Entities

1. KONIJANE STRATEGIC MARKETING, Abidjan-Cocody Angre 8eme Tranche, Les Residences Eve La Djibi, Lot no 664, Ilot 28, 05 Boite Postale Numero 2647, Abidjan, Cote d Ivoire; Organization Established Date 02 Mar 2021; Commercial Registry Number CI-ABJ-03-2021-B13-01153 (Cote d Ivoire) [GLOMAG].

    Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KEITA, Karim, a person whose property and interests in property are blocked pursuant to this order.

2. MINISTRY OF STATE SECURITY BORDER GUARD GENERAL BUREAU, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Type: Public order and safety activities [DPRK2].

    Designated pursuant to Section 1(a)(i) of Executive Order 13687 of January 2, 2015, "Imposing Additional Sanctions With Respect To North Korea" (E.O. 13687) for being an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea.

3. EVERLASTING EMPIRE LIMITED, Room 2105, QD5399, Trend Centre, 29-31 Cheung Lee Street, Chai Wan, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 16 Mar 2015; Business Registration Number 2211652 (Hong Kong) [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

4. FUJIAN NANAN IMPORT AND EXPORT CORPORATION (Chinese Simplified: 福建南安市进出口公司) (a.k.a. FUJIAN NANAN IMPORT & EXPORT COMPANY; a.k.a. FUJIAN NAN'AN IMPORT AND EXPORT COMPANY), No. 198 Xinhua Street, Ximei Nanan City, Fujian 362300, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Code 259861969 (China); Business Registration Number 350583100010710 (China); Unified Social Credit Code (USCC) 91350583259861969M (China) [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

5. QUANZHOU YIYANGJIN IMPORT AND EXPORT TRADE CO., LTD., China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

6. TIAN FANG HONG KONG HOLDINGS LIMITED (Chinese Simplified: 天纺香港国际贸易有限公司) (a.k.a. TIAN FANG HOLDINGS LIMITED; a.k.a. TIAN FANG HONG KONG HOLDING LTD.), Room 6, 10/F, CC Wu Building, 302-8 Hennessy Road, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 09 Jan 2007; Business Registration Number 1100762 (Hong Kong) [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK

STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

7. YANCHENG THREE LINE ONE POINT ANIMATION CO., LTD., 1272 Jinan Road, Jinsha Lake, Funing County, Yancheng City, Jiangsu Province, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

8. FUNSAGA PTE LTD., 111 North Bridge Road, #08-18, Peninsula Plaza, 179098, Singapore; Peninsular Plaza, 111 North Bridge Road, #08-11, 179098, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 30 Oct 2018; Identification Number 201836948N (Singapore) [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(vii) of E.O. 13722 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

9. KINOATIS LLC (a.k.a. KINOATIS; a.k.a. LIMITED LIABILITY COMPANY KINOATIS; a.k.a. LLC KINOATIS), Ul. Polkovaya D. 3, Str. 6, ET/POM/KOM 6/1/1, 3, Moscow 127018, Russia; Ul. Polkovaya, d. 3, Str. 6, r. 13, Moscow 127018, Russia; 36613 Polkovaya, Moscow, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 23 Jun 2004; Tax ID No. 7743531082; Business Registration Number 1047796451658 [DPRK3] (Linked To: SEK STUDIO).

   Designated pursuant to Section 2(a)(vii) of E.O. 13722 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEK STUDIO, a person whose property and interests in property are blocked pursuant to E.O. 13722.

Dated: December 9, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–27187 Filed 12–14–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessel that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied.

All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessel placed on the SDN List has been identified as property in which a blocked person has an interest.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 8, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. AYAN, Bahaddin (a.k.a. AYAN, Bahattin), Bahcekoy Mah Ihlamur Sk N4 Bahcekoy Sariyer, Istanbul, Turkey; Resit Pasa Birgul Mh Denizbank Ust Sit Yol Sk N29 Istinye, Istanbul, Turkey; DOB 07 Jan 1989; POB Ankara, Turkey; nationality Turkey; citizen Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 37937088634 (Turkey) (individual) [SDGT] (Linked To: ASB GROUP OF COMPANIES LIMITED).

Designated pursuant to section 1(a)(iii)(E)(1) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for being a leader or official of, ASB GROUP OF COMPANIES LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AYAN, Sitki (a.k.a. AYAN, Sidki), Istanbul, Turkey; DOB 01 Jan 1963; POB Golova, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 37982087194 (Turkey) expires 20 Apr 2025; alt. Passport U02536259 (Turkey) expires 28 Jun 2021 (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. KAPTAN, Mustafa Omer, Turkey; DOB 12 Jan 2003; POB Fatih, Turkey; citizen Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U25122157 (Turkey) expires 29 Sep 2031; National ID No. 24374076362 (Turkey) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. OZTAS, Kasim (a.k.a. OZTASH, Kasim; a.k.a. ''DZTAS, Kasim''), Turkey; DOB 15 May 1982; POB Aydin, Soke, Turkey; alt. POB Ankara, Soke, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U02506696 (Turkey) expires 22 Jun 2016; alt. Passport 27466202076 (Turkey) expires 22 Jun 2021; National ID No. 27466202076 (Turkey) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. TEKE, Murat, Turkey; DOB 24 Feb 1975; POB Mengen, Bolu, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U24165659 (Turkey); National ID No. 34810083984 (Turkey) (individual) [SDGT] [IFSR] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AKTAU PETROL TICARET ANONIM SIRKETI, Istinye Mah. Bostan Sok. No: 12 Sariyer, Istanbul, Turkey; No: 12 Istinye Mahallesi, Bostan Sokak, Sariyer, Istanbul 34460, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Oct 2005; Istanbul Chamber of Comm. No. 567778 (Turkey); Registration Number 567778–0 (Turkey); Central Registration System Number 0041–0411–7640–0020 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. ALAN ENERJI URETIM SANAYI VE TICARET ANONIM SIRKETI (f.k.a. ALAN ENERJI URETIM SANAYI VE TICARET LIMITED SIRKETI; f.k.a. TASFIYE HALINDE ALAN ENERJI URETIM SANAYI VE TICARET LIMITED SIRKETI), Istinye Mah. Bostan Sok. No: 12 Sariyer, Turkey; Resitpasa Mah. Denizbank Ust Sitesi Yol Sok. No. 29, Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Jun 2006; Istanbul Chamber of Comm. No. 593151 (Turkey); Registration Number 593151–0 (Turkey); Central Registration System Number 0048–0501–8650–0029 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. ANATOLIAN ULUSLARARASI ENERJI YATIRIM ANONIM SIRKETI, Istinye Mah. Bostan Sok. No: 12 Sariyer, Turkey; Resitpasa Mah. Denizbank Ust Sitesi Yol Sok. No. 29, Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 08 Feb 2011; Istanbul Chamber of Comm. No. 765327 (Turkey); Registration Number 764662–0 (Turkey); Central Registration System Number 0068–0805–2410–0026 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. ANKA ENERJI URETIM SANAYI VE TICARET ANONIM SIRKETI (a.k.a. ANKA ENERJI URETIM SANAYI VE TICARET LTD STI; f.k.a. TASFIYE HALINDE ANKA ENERJI URETIM SANAYI VE TICARET LIMITED SIRKETI), Resitpasa Mah. Denizbank Ust Sitesi Yol Sok. No. 29 Sariyer, 34467, Turkey; Instinye Mah, Bostan Sok. No. 12 Sariyer, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Jun 2006; Istanbul Chamber of Comm. No. 593158 (Turkey); Registration Number 593158–0 (Turkey); Central Registration System Number 0069–0405–7030–0026 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned,

controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. ASB GROUP OF COMPANIES LIMITED, 13/15 Giro's Passage Gibraltar, GX11 1AA, Gibraltar; Istinye Mahallesi Bostan Sokak No: 12, 34460, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 101499 (Gibraltar) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. ASB GRUP ENERJI SANAYI VE TICARET ANONIM SIRKETI, No: 12, Istinye Mahallesi Bostan Sokak, Sariyer, Istanbul 34460, Turkey; website *www.asbgroup.com.tr;* Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Tax ID No. 0860484730 (Turkey); Registration Number 820745 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. ASKA ENERJI TOPTAN SATIS SANAYI VE TICARET ANONIM SIRKETI, Istinye Mah. Bostan Sok. No: 12 Sariyer, Turkey; No. 29, Resitpasa Mah. Denizbank Ust Sitesi Yol Sok. Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 31 Jul 2013; Istanbul Chamber of Comm. No. 879494 (Turkey); Registration Number 878346–0 (Turkey); Central Registration System Number 0086–0498–2047–6374 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. ASL ENERJI SANAYI VE TICARET ANONIM SIRKETI, No: 12 Istinye Mahallesi, Bostan Sokak, Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Nov 2012; Istanbul Chamber of Comm. No. 843769 (Turkey); Registration Number 842743–0 (Turkey); Central Registration System Number 0086–0489–8593–7973 (Turkey) [SDGT] (Linked To: AYAN, Bahaddin).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Bahaddin AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. BASLAM NAKLIYAT VE DIS TICARET LTD STI (a.k.a. BASLAM NAKLIYAT VE DIS TICARET LIMITED SIRKETI; a.k.a. BASLAM TRANSPORT AND FOREIGN TRADE), Deniz Bank Ust Sitesi, 29 Yol Sokak, Resitpasa, Istinye, Sariyer, Istanbul 34467, Turkey; Istinye MH, Bostan Sk. N. 12 Sariyer, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Tax ID No. 1480059591 (Turkey); Registration Number 389767–0 (Turkey); Central Registration System Number 0148–0059–5910–0013 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. BASLAM PETROL SANAYI VE TICARET ANONIM SIRKETI, Sariyer Istinye Mahallesi Bostan Sokak No: 12, Istanbul 34460, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 985486 (Turkey); Registration Number 988020–0 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. BUMERZ DENIZCILIK VE TICARET ANONIM SIRKETI (a.k.a. BUMERZ SHIPPING; f.k.a. TURKUAZ DENIZCILIK VE TICARET ANONIM SIRKETI), Istinye Mah. Bostan Sok., No: 12, Sariyer, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 10 Apr 2006; Istanbul Chamber of Comm. No. 584894 (Turkey); Registration Number 584894–0 (Turkey); Central Registration System Number 0871–0476–9280–0013 (Turkey) [SDGT] (Linked To: AYAN, Bahaddin).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Bahaddin AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. BYLAN ULUSLARARASI TICARET VE GAYRIMENKUL SANAYI ANONIM SIRKETI (f.k.a. BYLAN GAYRIMENKUL TICARET ANONIM SIRKETI; f.k.a. BYLAN ULUSLAR ARASI TICARET VE GAYRIMENKUL ANONIM SIRKETI), No. 12, Istinye Mahallesi Bostan Sokak, Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Mar 2009; Istanbul Chamber of Comm. No. 692774 (Turkey); Registration Number 692774–0 (Turkey); Central Registration System Number 0195–0249–1640–0012 (Turkey) [SDGT] (Linked To: ASB GROUP OF COMPANIES LIMITED).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ASB GROUP OF COMPANIES LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. CGN TRADE FZE (a.k.a. CGN TRADE), Saif Zone Office P8–03–41, Sharjah, United Arab Emirates; Parahat 3/2, Business Center, Parahat, Ashgabat 744000, Turkmenistan; Srednyaya Kalitnikovskaya Street 26/29, Russia; website *http://www.cgtradefze.com/;* Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Oct 2019; Commercial Registry Number 11618701 (United Arab Emirates); License 20897 (United Arab Emirates) [SDGT] (Linked To: BASLAM NAKLIYAT VE DIS TICARET LTD STI).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BASLAM NAKLIYAT VE DIS TICARET LTD STI, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. CTAT GIDA VE SAGLIK URUNLERI SANAYI VE TICARET ANONIM SIRKETI, No. 29 Denizbank Ust Sitesi, Resitpasa Mah. Yol Sok., Sariyer, Istanbul 34467, Turkey; Istinye Mah. Bostan Sok. No. 12, Sariyer, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 801971 (Turkey); Registration Number 801067–0 (Turkey); Central Registration System Number 0215–0245–8590–0012 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. ELVEGARD SHIPPING SHIPPING LTD, A–1 Tabassum Fatma, Bargadi Magath, Bakshi Ka Talab, Lucknow, Uttar Pradesh 226201, India; Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro 96960, Marshall Islands; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number IMO 6258171; Registration Number 108645 (Marshall Islands) [SDGT] (Linked To: ASB GROUP OF COMPANIES LIMITED).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ASB GROUP OF COMPANIES LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. GENT ELEKTRIK ENERJISI TOPTAN SATIS ANONIM SIRKETI (f.k.a. BATI ENERJI URETIM SANAYI VE TICARET ANONIM SIRKETI; a.k.a. GENT ELEKTRIK ENERJISI TOPTAN SATI AS), No: 12, Istinye Mahallesi Bostan Sokak, Sariyer, Istanbul 34460, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 593351 (Turkey); Registration Number 593351–0 (Turkey); Central Registration System Number 0150–0522–0980–0013 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned,

controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

17. GENT PETROL VE DIS TICARET LIMITED SIRKETI, Istinye Mah. Bostan Sok. No. 12 Sariyer, Istanbul, Turkey; No. 29 Resitpasa Deniz Bank Ust Sit. Yol Sk., Istinye, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 443806 (Turkey); Registration Number 443806–0 (Turkey); Central Registration System Number 0394–0158–3920–0015 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

18. MS ULUSLARARASI ENERJI YATIRIM ANONIM SIRKETI, Istinye MH. Bostan SK. N. 12 Sariyer, Istanbul, Turkey; Resitpasa Mah. Denizbank Ust Sitesi Yol Sok. No. 29 Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 775555 (Turkey); Registration Number 774879–0 (Turkey); Central Registration System Number 0623–0324–8470–0010 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

19. OGC–VICTORIA HOLDING LTD (a.k.a. OIL GAS CONSULTING—VICTORIA HOLDING, LTD.), Proteas House, Floor No: 5, Limassol, Cyprus; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 29 Aug 2018; Registration Number HE 388062 (Cyprus) [SDGT] [IFSR] (Linked To: BASLAM NAKLIYAT VE DIS TICARET LTD STI).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BASLAM NAKLIYAT VE DIS TICARET LTD STI, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

20. PERLITE INSAAT SANAYI VE TICARET ANONIM SIRKETI, Instinye MH. Bostan Sk. No. 12 Sariyer, Istanbul, Turkey; No. 29 Resitpasa Mah.Denizbank Ust Sitesi Yol Sok, Sariyer, Istanbul, 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 848039 (Turkey); Registration Number 846993–0 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

21. RAIN TRADE GIDA IC VE DIS TICARET LIMITED SIRKETI, Maslak Mah. Sanatkarlar Sk. Eclipse Maslak Sit. No: 2B/244, Sariyer, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 May 2019; Istanbul Chamber of Comm. No. 1184720 (Turkey); Registration Number 194936–5 (Turkey); Central Registration System Number 0734–1778–2910–0001 (Turkey) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

22. SAMED PETROL VE ENERJI DIS TICARET LIMITED SIRKETI, No: 12, Istinye Mahallesi Bostan Sokak, Sariyer, Istanbul 34460, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 475133 (Turkey); Registration Number 475133–0 (Turkey); Central Registration System Number 0742–0233–1450–0012 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

23. SOM OVERSEAS PETROLEUM ENERJI SANAYI VE TICARET ANONIM SIRKETI, N: 12 Istinye Mahallesi, Bostan Sokak, Sariyer, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 807703 (Turkey); Registration Number 806779–0 (Turkey); Central Registration System Number 0773–0337–4440–0013 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

24. SOM PETROL TICARET ANONIM SIRKETI, No: 12, Istinye Mahallesi Bostan Sokak, Sariyer, Istanbul, 34460, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Tax ID No. 0130033164 (Turkey); Istanbul Chamber of Comm. No. 429724 (Turkey); Registration Number 429724–0 (Turkey); Central Registration System Number 13003316464809 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

25. SOMAS ENERJI SANAYI VE TICARET ANONIM SIRKETI, Instinye Mah. Bostan Sok. No. 12 Sariyer, Istanbul, Turkey; Resitpasa Mah. Denizbank Ust Sitesi Yol Sok. No. 29 Sariyer, Istanbul 34467, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Istanbul Chamber of Comm. No. 631434 (Turkey); Registration Number 631434–0 (Turkey); Central Registration System Number 0773–0324–4740–0012 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

26. TURANG TRANSIT TASIMACILIK ANONIM SIRKETI, No: 12, Istinye Mahallesi Bostan Sokak, Sariyer, Istanbul, 34460, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Tax ID No. 8690441432 (Turkey); Istanbul Chamber of Comm. No. 685022 (Turkey); Registration Number 685022–0 (Turkey); Central Registration System Number 0869–0441–4320–0012 (Turkey) [SDGT] (Linked To: AYAN, Sitki).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Sitki AYAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

On December 8, 2022, OFAC also identified the following vessel as property in which a blocked person has an interest under the relevant sanctions authority listed below:

Vessel

1. QUEEN LUCA LPG Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9102198 (vessel) [SDGT] (Linked To: ELVEGARD SHIPPING LTD).

Identified pursuant to E.O. 13224, as amended, as property in which ELVEGARD SHIPPING LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: December 8, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–27153 Filed 12–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Guidance Regarding Deduction and Capitalization of Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning guidance regarding deduction and capitalization of expenditures.

DATES: Written comments should be received on or before February 13, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–1870 or Guidance Regarding Deduction and Capitalization of Expenditures.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance Regarding Deduction and Capitalization of Expenditures.

OMB Number: 1545–1870.

Regulation Project Number: TD 9107.

Abstract: The information required to be retained by taxpayers will constitute enough documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 12, 2022.

Molly J. Stasko,

Supervisory Tax Analyst.

[FR Doc. 2022–27244 Filed 12–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Primary Dealer Meeting Agenda

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before January 17, 2023.

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.

Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Primary Dealer Meeting Agenda.

OMB Control Number: 1505–0261.

Type of Review: Extension without change of a currently approved collection.

Description: The Primary Dealer Meeting Agenda a quarterly survey sent to all primary dealers, of which there are currently 25 financial institutions. Primary dealers are trading counterparties of the Federal Reserve Bank of New York in its implementation of monetary policy. Primary dealers are also expected to have a substantial presence as a market maker for Treasury securities and bid on a pro-rata basis in all Treasury auctions.

The Treasury's mission to manage the U.S. government's finances and resources effectively includes financing the government's borrowing needs at the lowest cost over time. Treasury meets this objective by issuing debt in a regular and predictable pattern, providing transparency in its decision-making process, and seeking continuous improvements in the Treasury auction process. The risks to regular and predictable debt issuance result from unexpected changes in our borrowing requirements, changes in the demand for Treasury securities, and anything that inhibits timely sales of securities. To reduce these risks, Treasury closely monitors economic conditions, market activity, and, if necessary, responds with appropriate changes in debt issuance based on analysis and consultation with market participants, including the primary dealers through the quarterly survey and subsequent meetings.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 25.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–27239 Filed 12–14–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Preauthorization and Request for Payment of Bowel and Bladder Services

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov*. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Preauthorization and Request for Payment of Bowel and Bladder Services, VA Forms 10–314a, 10–314b.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Legal authority for this information collection is found in 38 U.S.C., Chapter 17, for Veterans seeking health care services. Data collected may be used to establish, determine, and monitor eligibility to receive VA benefits and for authorizing and paying Non-VA healthcare services furnished to Veterans and beneficiaries. VA Form 10–314a will be used by physicians to request preauthorization of bowel and bladder services and certify that caregivers have been properly trained and meet all requirements for safely rendering care to Veterans. VA Form 10–314b is required for caregivers to receive reimbursement for bowel and bladder care services. The form is used to list the dates and times the care was rendered to the Veteran and is then submitted monthly to VA to request payment for those services.

Total Annual Number of Responses = 44,200.

Total Annual Time Burden = 7,367 hours.

VA Form 10–314a:

Affected Public: Individuals or households.

Estimated Annual Burden: 567 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once time.

Estimated Number of Respondents: 3,400.

VA Form 10–314b:

Affected Public: Individuals or households.

Estimated Annual Burden: 6,800 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: 12 times per year.

Estimated Number of Respondents: 3,400.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–27157 Filed 12–14–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 240 December 15, 2022

Part II

Commodity Futures Trading Commission

17 CFR Parts 39 and 140

Reporting and Information Requirements for Derivatives Clearing Organizations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AF12

Reporting and Information Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is proposing to amend certain reporting and information regulations applicable to derivatives clearing organizations (DCOs). These proposed amendments would, among other things, update information requirements associated with commingling customer funds and positions in futures and swaps in the same account, address certain systems-related reporting obligations regarding exceptional events, revise certain daily and event-specific reporting requirements, and include in an appendix the fields that a DCO is required to provide on a daily basis. In addition, the Commission is proposing to amend certain delegation provisions.

DATES: Comments must be received by February 13, 2023.

ADDRESSES: You may submit comments, identified by ''Reporting and Information Requirements for Derivatives Clearing Organizations'' and RIN number 3038–AF12, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov;* Parisa Nouri, Associate Director, 202–418–6620, *pnouri@cftc.gov;* or August A. Imholtz III, Special Counsel, 202–418–5140, *aimholtz@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; Theodore Z. Polley III, Associate Director, (312) 596–0551, *tpolley@cftc.gov;* or Elizabeth Arumilli, Special Counsel, (312) 596–0632, *earumilli@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.

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I. Background

Regulatory requirements for DCOs are set forth in part 39 of the Commission's regulations. In January 2020, the Commission amended many of the provisions in part 39 in order to, among other things, enhance certain risk management and reporting obligations, clarify the meaning of certain provisions, and simplify processes for registration and reporting.[2] Since that time, the Commission has become aware of certain issues with the amended reporting and information requirements that would benefit from further change or clarification. These proposed changes are discussed in greater detail below.[3]

II. Proposed Amendments to § 39.13(h)(5)

Regulation 39.13(h)(5) requires a DCO to have rules that require its clearing members to maintain current written risk management policies and procedures; ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices; and require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission

[1] 17 CFR 145.9. Commission regulations referred to in this release are found at 17 CFR chapter I (2021), and are accessible on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020), available at *https://www.federalregister.gov/documents/2020/01/27/2020-01065/derivatives-clearing-organization-general-provisions-and-core-principles.*

[3] The Commission is also proposing a technical correction to § 39.25(c), changing the word ''describe'' to ''have.''

upon the Commission's request. It also requires the DCO to review the risk management policies, procedures, and practices of each of its clearing members on a periodic basis.

It is the Commission's view that these requirements are unnecessary for clearing members that clear only fully collateralized positions, as fully collateralized positions do not expose the DCO to any credit or default risk stemming from the inability of a clearing member to meet a margin call or a call for additional capital. Therefore, and consistent with other recent amendments to part 39 to address fully collateralized positions,[4] the Commission is proposing new § 39.13(h)(5)(iii), which would provide that a DCO that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) those clearing members that clear only fully collateralized positions.[5] These requirements would still apply in the case of clearing members that clear fully collateralized positions but also margined products.[6]

III. Proposed Amendments to § 39.15(b)(2)

Regulation 39.15(b)(2) sets forth procedures a DCO must follow to obtain Commission approval to commingle customer positions and associated funds from two or more of three separate account classes—futures and options, foreign futures and options, and swaps—in either a futures or cleared swaps customer account.

Regulation 39.15(b)(2)(i) requires a DCO seeking to commingle customer positions and associated funds in a cleared swaps customer account subject to Section 4d(f) of the Commodity Exchange Act (CEA)[7] to submit rules pursuant to § 40.5 for Commission approval.[8] Regulation 39.15(b)(2)(ii) requires a DCO seeking to commingle customer positions and associated funds in a futures account subject to Section 4d(a) of the CEA to also submit rules for approval pursuant to § 40.5.[9]

Until § 39.15(b)(2)(ii) was amended in 2020, a DCO seeking to commingle in a futures account had to seek a Commission order. Given that the procedural requirements are now the same with respect to both futures and cleared swaps customer accounts, the Commission is proposing to consolidate paragraphs (b)(2)(i) and (b)(2)(ii) into a single paragraph.

Existing § 39.15(b)(2)(i) also specifies the information that a DCO must include in its rule submission to obtain Commission approval. The Commission has identified items of information currently required by the regulation that appear to be redundant or of limited use to the Commission given the Commission's pre-existing understanding of a DCO's risk management through its supervision of DCOs and other Commission regulations applicable to DCOs. This information is also available to the DCO's clearing members and the public through other means, such as the public information disclosures required under § 39.21. The Commission has also identified limited instances in which additional information would be helpful to the Commission in reviewing a DCO's commingling rule submission. Therefore, the Commission is proposing to further amend § 39.15(b)(2)(i) as described below.

First, the Commission proposes to amend existing paragraph (b)(2)(i)(B), which requires the DCO to provide an analysis of the risk characteristics of the products that would be eligible for commingling. The Commission proposes to specify that this analysis should discuss any risk characteristics of products to be commingled that are unusual in relation to the other products the DCO clears, and how the DCO plans to manage any identified risks. The purpose of this requirement is to allow the Commission and the public to understand any increased risk posed to customers by commingling products that otherwise would be held in separate accounts and to understand the DCO's ability to manage those risks. The Commission is proposing to use the term "unusual" because § 39.13(g)(2) already requires a DCO to have initial margin requirements that account for any unusual characteristics of, or risks associated with, particular products or portfolios.[10] However, the Commission requests comment on whether there are better ways to articulate this concept. For example, should the Commission specify that the discussion should cover products that have margining, liquidity, default management, pricing, or other risk characteristics that differ from those currently cleared by the DCO?

The Commission proposes to remove existing paragraph (b)(2)(i)(C), which requires the DCO to identify whether any swaps to be commingled would be executed bilaterally and/or executed on a designated contract market and/or a swap execution facility. The Commission has not found this information to be relevant to its review of commingling rule submissions.

The Commission proposes to remove existing paragraph (b)(2)(i)(E), which requires the DCO to provide an analysis of the availability of reliable prices for each of the eligible products. The Commission believes this requirement is unnecessary as § 39.13(g)(5) separately requires that a DCO have for all of its products a reliable source of timely price data, as well as written procedures and sound valuation models for addressing circumstances where pricing data is not readily available or reliable.

The Commission proposes to amend paragraph (b)(2)(i)(F) (and renumber it as (b)(2)(iv)), which currently requires the DCO to describe the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products. The Commission recognizes that this could be interpreted to require that the DCO describe all of the requirements applicable to clearing members that would be permitted to commingle eligible products, including those requirements that apply to the DCO's clearing members generally. The proposed amendment would require only that the DCO describe any additional requirements that would apply to clearing members permitted to commingle eligible products.

The Commission proposes to amend paragraph (b)(2)(i)(G) (and renumber it as (b)(2)(v)), which currently requires that a DCO discuss its systems and procedures used to oversee clearing members' risk management of commingled eligible products. The Commission recognizes that a DCO would not necessarily need to implement any systems and procedures specifically for commingled eligible products. Accordingly, the proposed amendment clarifies that a DCO should

[4] *See* 85 FR 4800, 4803–4805.

[5] By adopting this regulation, this requirement would be consistent with and would supersede a related interpretation issued by the Division of Clearing and Risk. *See* CFTC Letter No. 14–05 (Jan. 16, 2014).

[6] The Commission is also proposing to combine paragraphs (h)(5)(i)(B) and (C) of § 39.13, which require, respectively, that a DCO have rules that: ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, and require its clearing members to make such information and documents available to the Commission upon request. These revisions are purely technical and are not meant to alter the requirements in any way.

[7] *See* 7 U.S.C. 6d(f).

[8] Regulation 40.5 requires the Commission to approve a new rule or rule amendment unless it is inconsistent with the CEA or the Commission's regulations promulgated thereunder. *See* 17 CFR 40.5.

[9] *See* 7 U.S.C. 6d(a).

[10] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69365, n.86 (Nov. 8, 2011), available at *https://www.federalregister.gov/documents/2011/11/08/2011-27536/derivatives-clearing-organization-general-provisions-and-core-principles.*

describe any changes it will implement to oversee clearing members' risk management of commingled eligible products, but also provides that a DCO may instead provide an analysis of why existing risk management systems and procedures are adequate.

The Commission proposes to remove existing paragraph (b)(2)(i)(H), which requires the DCO to describe its financial resources, including the composition and availability of a guaranty fund with respect to the eligible products that would be commingled. This requirement is duplicative of § 39.21(c)(4), which requires a DCO to publicly disclose on its website the size and composition of its financial resources package available in the event of a clearing member default.

The Commission proposes to remove existing paragraph (b)(2)(i)(I), which requires the DCO to provide a description and analysis of the margin methodology that would be applied to the commingled eligible products, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers. Regulation 39.21(c)(3) separately requires a DCO to publicly disclose information concerning its margin methodology on its website, so the requirement in paragraph (b)(2)(i)(I) typically yields information that is already available to the Commission and the public. In place of paragraph (b)(2)(i)(I), the Commission proposes to add new paragraph (b)(2)(vii), which would require the DCO to discuss the extent to which it anticipates allowing portfolio margining of commingled positions, including a description and analysis of any margin reduction to be applied to correlated positions and the language of any applicable clearing rules or procedures. The DCO also would be required to provide an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4), which allows portfolio margining of positions only if the price risks with respect to such positions are ''significantly and reliably correlated.'' The Commission is proposing to require this confirmation out of concern that Commission approval of the commingling of customer positions would be misinterpreted as approval of the portfolio margining of those positions as well, regardless of whether the requirements of § 39.13(g)(4) are met.

The Commission proposes to remove existing paragraph (b)(2)(i)(K), which requires the DCO to discuss the procedures it would follow if a clearing member defaulted, and the procedures that the clearing member would follow if a customer defaulted, with respect to any of the commingled eligible products. To the extent a DCO would follow its existing default procedures, this information is already available to the Commission and the public, because § 39.21(c)(6) requires a DCO to publicly disclose its default rules and procedures on its website. The Commission therefore proposes to amend existing paragraph (b)(2)(i)(J) (and renumber it as paragraph (b)(2)(vi)), which also concerns default management, to add a requirement that the DCO discuss any default management procedures that are unique to the products eligible for commingling. This change would appropriately focus the required discussion of the DCO's default management procedures on any changes necessitated by the commingling of eligible products.

The Commission proposes to remove existing paragraph (b)(2)(i)(L), which requires the DCO to describe its arrangements for obtaining daily position data with respect to eligible products in the account. Because the DCO would be proposing to commingle positions in products it clears, the DCO would necessarily have position data for the eligible products.

The Commission proposes to remove existing paragraph (b)(2)(iii), which provides that the Commission may request additional information from the DCO in support of the DCO's rule submission and may approve the rule submission in accordance with § 40.5. The Commission proposes to replace it with new paragraph (b)(2)(viii), which would require submission of any other information necessary for the Commission to evaluate the rule submission's compliance with the CEA and the Commission's regulations, and provide that the Commission may request supplemental information to evaluate the DCO's submission. Proposed paragraph (b)(2)(viii), like existing paragraph (b)(2)(iii), would ensure that the Commission can consider all information relevant to the rule submission.[11] The paragraph also would clarify that the Commission can extend the review period in accordance with § 40.5(d) to request and obtain supplemental information.

Finally, the Commission proposes to add language to the introductory paragraph of § 39.15(b)(2) underscoring the standard of review for Commission approval of a commingling rule submission. While the current regulation already provides that relevant rules are submitted for approval pursuant to § 40.5, the Commission has observed instances in which submitting DCOs do not recognize that the requirements and standard of review contained in § 40.5 apply. To draw attention to the applicability of the requirements of § 40.5, including the standard of review contained therein, the Commission proposes amending § 39.15(b)(2) to explicitly reference them.

In evaluating commingling rule submissions, the Commission recognizes that it has access to supervisory information that may not be available to market participants and the public. The Commission requests comment as to whether there is additional information that would be helpful to market participants and the public in evaluating a DCO's commingling rule submission.

IV. Proposed Amendments to § 39.18

Regulation 39.18(g)(1) requires that a DCO promptly notify staff of the Division of Clearing and Risk (Division) of any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment of, automated system operation, reliability, security, or capacity.

The Commission is proposing to amend § 39.18(g)(1) to require that a DCO promptly notify the Division of any hardware or software malfunction or operator error that impairs, or creates a significant likelihood of impairment of, automated system operation, reliability, security, or capacity. The Commission is further proposing to adopt new § 39.18(g)(2) to require that a DCO promptly notify the Division of any security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of any automated system or any information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities (the text of existing § 39.18(g)(2) would be renumbered as § 39.18(g)(3), without any further revisions). In connection with the proposed amendments to § 39.18(g), the Commission is proposing to amend § 39.18(a) to define ''hardware or software malfunction'' and ''automated system.'' These changes are discussed in detail below.

As noted above, § 39.18(g)(1) requires a DCO to promptly notify the Division

[11] Removing existing paragraph (b)(2)(iii) and replacing it with new paragraph (b)(2)(viii) would also delete redundant language incorporating § 40.5 as the applicable procedure for rule approval.

of any ''hardware or software malfunction,'' which the Commission proposes to define in § 39.18(a) as ''any circumstance where an automated system or a manually initiated process fails to function as designed or intended, or the output of the software produces an inaccurate result.'' The Commission is proposing to amend § 39.18(g)(1) to also require a DCO to notify the Division when operator error impairs (or creates a significant likelihood of impairment of) the operation, reliability, security, or capacity of an automated system. Because operator error can cause the same or similar issues that can result from hardware or software malfunctions, the Commission believes that it is important for a DCO to notify the Division when operator error causes, or creates a significant likelihood of, impairment of the operation, reliability, security, or capacity of the DCO's automated systems. Lastly, the Commission is proposing to define in § 39.18(a) the term ''automated system'' as computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources that a DCO uses in its operations. The Commission also is proposing to delete from § 39.18(g)(1), and not include in new § 39.18(g)(2), any reference to materiality.

Based on its experience with this regulation, the Commission believes that neither hardware nor software malfunctions, nor security incidents or threats—particularly cybersecurity incidents or threats—are readily categorized as material or non-material. For example, a software malfunction that impairs (or creates a significant likelihood of impairment of) the operation, reliability, security, or capacity of an automated system can be material, even if the malfunction does not have any effect on the metrics or thresholds often used to determine materiality, such as the number of trades affected by the malfunction, the dollar value of those trades, or the length of a delay in processing and clearing those trades. There have also been instances where the Division learned of a malfunction, incident, or threat that had not been reported, even though Division staff readily concluded, upon subsequently learning of the malfunction, incident, or threat, that it was material and that the DCO should have notified the Division. In some cases, this is because different materiality thresholds used by DCOs resulted in inconsistent reporting across DCOs. The Commission believes that both DCOs and the Division will benefit from having a clear, bright-line rule that requires DCOs to report each qualifying hardware or software malfunction, or operator error, and security incident and threat, as opposed to attempting to determine whether a particular malfunction, incident, or threat qualifies as material.

In addition to proposing to modify § 39.18(g)(1) as described above, the Commission also is proposing to delete the requirement that a DCO notify the Division of any security incident or targeted threat that materially impairs, or creates a significant likelihood of material impairment of, automated system operation, reliability, security, or capacity. In its place, the Commission is proposing, as new § 39.18(g)(2), a requirement that a DCO report any security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of any automated system, or any information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities. Requiring the reporting of any threat, not just ''targeted'' ones, is intended to ensure that the Division receives notice of the full spectrum of cyberattacks and cyberthreats. Additionally, proposed new § 39.18(g)(2) is intended to ensure that a DCO notifies the Division of security incidents or threats that could affect the information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities, in addition to the existing requirement that a DCO provide notice of any security incident or threat that affects the automated system itself. To the extent that a DCO relies on another entity in connection with providing clearing services, whether via an inter-affiliate services agreement, an arms-length commercial relationship with a third-party vendor, or any other arrangement, then it is important that the DCO notify the Commission upon discovery of any security incidents or threats affecting the information, services, or data that the DCO relies upon from the other entity, just as if the incident or threat had occurred at the DCO. Lastly, proposed new § 39.18(g)(2) is intended to ensure that a DCO notifies the Division if its automated systems or the information, services, or data relied upon by the DCO are, or could be, compromised, as opposed to only receiving notice when those systems are, or could be, impaired.

V. Proposed Amendments to § 39.19(c)

Regulation 39.19, which was adopted in 2011 [12] and revised in 2020,[13] imposes daily, periodic, and event-specific reporting requirements on DCOs. As discussed below, the Commission is proposing to amend the daily reporting requirements in § 39.19(c)(1) and the event-specific reporting requirements in § 39.19(c)(4).

A. Daily Reporting of Variation Margin and Cash Flows—§ 39.19(c)(1)(i)(B) and (C)

Regulation 39.19(c)(1) requires a DCO to report to the Commission on a daily basis initial margin, variation margin, cash flow, and position information for each clearing member, by house origin and by each customer origin. The Commission recently amended § 39.19(c)(1) to require a DCO to also report this information by individual customer account.[14] In adopting this change, the Commission stated that the amendments to § 39.19(c)(1) were not intended to require DCOs to report any information that they do not currently have, or do not currently report, subject to any operational or technological limitations that have been discussed with Commission staff. The Commission further specified that the changes to § 39.19(c)(1) to require reporting of information ''by each individual customer account'' were meant to reflect the information that DCOs currently report, to varying degrees, acknowledging that customer-level information may not be available to all DCOs.[15]

The Commission now understands that, although DCOs possess customer-level information regarding initial margin and positions, many DCOs do not possess customer-level information regarding variation margin and cash flows. Also, certain DCOs do not currently have mechanisms in place to collect such information from their respective clearing members, nor do they expect that they could implement these mechanisms without imposing significant new reporting and/or account registration requirements on clearing members. Therefore, the Commission is proposing to amend § 39.19(c)(1)(i)(B) and (C) to remove the requirement that a DCO report daily variation margin and cash flows by individual customer account.[16]

[12] *See* 76 FR at 69399.

[13] *See* 85 FR at 4817.

[14] *Id.* at 4817.

[15] *See id.* at 4818.

[16] The Division issued a no-action letter addressing compliance with the amended

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The Commission requests comment on the proposal to amend § 39.19(c)(1)(i)(B) and (C) to remove the requirement that a DCO report daily variation margin and cash flows by individual customer account. The Commission also requests comment on whether there are products or market segments (*e.g.,* interest rate swaps) where it may be appropriate for the Commission to retain these requirements.

B. Codifying the Existing Reporting Fields for the Daily Reporting Requirements in New Appendix C to Part 39

The Commission is proposing to add a new appendix to part 39 of the Commission's regulations that would codify the existing reporting fields for the daily reporting requirements in § 39.19(c)(1). Until now, the instructions, reporting fields, and technical specifications for daily reporting have been contained in the Reporting Guidebook, which the Division provides to DCOs to facilitate reporting pursuant to § 39.19(c)(1).[17]

When § 39.19(c)(1) was first adopted in 2011, DCOs were required to report to the Commission on a daily basis initial margin, variation margin, cash flow, and position information for each clearing member, by house origin and by each customer origin.[18] To implement these requirements and provide more detailed instructions and technical specifications, the Division, after consulting with DCOs, developed and distributed the Reporting Guidebook. The Reporting Guidebook was designed to ensure that all DCOs were reporting a standard set of information in a uniform manner, and that the information was useful to the Commission in its surveillance and oversight of DCOs and the derivatives markets.

The Division updated and revised the Reporting Guidebook over the years, most recently in 2017 and again in 2021. Each time, it engaged extensively with DCOs in connection with the revisions. The engagement included discussions regarding whether DCOs possessed certain data, and the format in which DCOs would supply that data so that it would be useful by the Division. In addition to the discussions associated with revising the Reporting Guidebook, the Division and DCOs also regularly engaged cooperatively, on an as-needed basis to address any issues that arose regarding daily reporting.

The current version of the Reporting Guidebook reflects the cumulative development of the guidebook over the years, from 2012 through 2021. During that time, DCOs have continuously relied on the Reporting Guidebook to report to the Division the required information in accordance with § 39.19(c)(1). The Reporting Guidebook also has grown in length, comprehensiveness, detail, and complexity. It now consists of numerous separate reporting fields, including data fields that directly implement the reporting requirements of § 39.19(c)(1), as well as additional fields for reporting information on an optional basis that, although helpful to the Division in its oversight of DCOs and the derivatives markets, is not required under § 39.19(c)(1).

Given the evolution and expansion of the Reporting Guidebook over time, the Commission is proposing to add a new appendix C to part 39 that would set out the relevant contents of the Reporting Guidebook, specifically the reporting fields for which a DCO is required to provide data on a daily basis, as well as additional optional data that DCOs may provide.[19] The Commission is not proposing to codify the non-substantive technical and procedural aspects of the Reporting Guidebook that address the format and manner in which DCOs provide this information.

C. Proposed Additional Reporting Fields for the Daily Reporting Requirements—§ 39.19(c)(1)

The Commission is proposing to include in appendix C several new fields that do not appear in the Reporting Guidebook but would further implement the existing daily reporting requirements under § 39.19(c)(1). These new fields, applicable to interest rate swaps only, include the delta ladder, gamma ladder, vega ladder, zero rate curves, and yield curves that the DCO uses in connection with managing risks associated with interest rate swaps positions. Some DCOs that clear interest rate swaps already provide this information to the Commission on a voluntary basis. The Commission believes that all DCOs that clear interest rate swaps have this information, and have the ability to report it to the Commission, regardless of whether they currently do so. The Commission needs this information to better ascertain and evaluate the risks associated with these positions, including using this information to stress test these positions and to develop an improved understanding of how market price changes would affect these positions. As proposed, the reporting of this information would be required for interest rate swaps only, due to the relatively broad range of risk exposures across a wide variety of tenors. By way of comparison, contracts with optionality (*e.g.,* swaptions) are generally less cleared than other asset classes; therefore, risk measures other than delta ladders would not, as of now, be that significant and thus not particularly informative relative to the cost of reporting. However, over time, swap contracts with explicit or implicit option characteristics may become more common, potentially leading to greater benefits than costs for non-delta risk measures. Because of this, the Commission requests comment on the potential value of additional risk ladders. For delta ladders specifically, the broad spectrum of risk exposures in rates somewhat contrasts with other asset classes. Credit default swaps tend to be highly focused on the 5-year tenor; therefore, delta ladders would not provide much information beyond that of a single, aggregate delta value. The same is true for FX contracts, which tend to be concentrated in very short tenors. In contrast, large interest rate swap exposures are common for tenors spanning from a single week to 30 years. Therefore, the Commission seeks to obtain data on how this risk is allocated among certain tenor ranges.

Additionally, the Commission is proposing to require that a DCO include in its daily reports timing information about variation margin calls and payments. Specifically, the Commission is proposing that this information include the time and amount of each variation margin call to each clearing member, the time and amount that variation margin is received from each clearing member, and the time and amount that variation margin is paid to each clearing member. The Commission needs this information to improve its risk surveillance of DCOs. Information regarding the size and frequency of

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requirements in § 39.19(c)(1). *See* CFTC Letter No. 21–01 (Dec. 31, 2020); *see also* CFTC Letter No. 21–31 (Dec. 22, 2021). The proposed amendments to § 39.19(c)(1)(i)(B) and (C) would eliminate the requirement for which additional time was provided in the staff letter.

[17] Commodity Futures Trading Commission Guidebook for Part 39 Daily Reports, Version 1.0.1, Dec. 10, 2021 (Reporting Guidebook).

[18] *See* 76 FR at 69399. The Commission amended § 39.19(c)(1) in 2020 to require a DCO to also report this information by individual customer account. *See* 85 FR at 4817.

[19] Appendix C specifies whether a field is mandatory, optional, or conditional. In this context, fields that are ''conditional'' would be reported by the DCO if it collects or calculates the particular data element and uses the data element in the normal course of its risk management and operations, or if the field is subject to any row-level validation rule described in the Reporting Guidebook.

variation margin calls, and when those calls are paid, is directly relevant to DCO liquidity and how clearing member and customer risk is being managed, both of which are important to the Commission in evaluating risks at each DCO and across the derivatives markets. The Commission anticipates that receiving this information on a daily basis would support its ongoing surveillance and oversight of DCOs and the markets, including potentially identifying liquidity issues as they develop, especially to the extent that liquidity issues associated with one clearing member could affect multiple DCOs. The Commission also anticipates that this information would be useful for historical analysis to evaluate whether potential deficiencies exist regarding DCO liquidity as it relates to the collection and payment of variation margin, including examining whether and how particular market circumstances contribute to liquidity issues, and what measures might be appropriate to address such deficiencies or issues.

Further, the Commission is proposing to require a DCO that clears interest rate swaps, forward rate agreements, or inflation index swaps to include in its daily reports the actual trade date for each position along with an event description. Although DCOs currently report the date that these products are cleared, DCOs are not required to report the trade date. The Commission seeks to improve its understanding of when and how positions in interest rate swaps, forward rate agreements, and inflation index swaps arose, because these products sometimes are not cleared on the trade date. Adding the trade date and event description to positions in these products would improve the Commission's understanding of the lifecycle of each position, which would result in a better understanding of the risks these positions present to the DCO and its clearing members.

Additionally, the Commission is proposing to require a DCO to include in its daily reports information that reflects that the daily report is complete.[20] The Commission is proposing to require that completeness information be submitted either as a manifest file that contains a list of files sent by the DCO, or by including the file number and count information embedded within each report, where each FIXML file would indicate its position in the sequence of files submitted that day, *i.e.,* file 1 of 10. To the extent that a DCO submits to the Commission multiple files in satisfaction of its daily reporting obligations, it can be difficult for Commission staff to determine whether a DCO has completed its reporting for the day, which in turn makes it difficult to validate the information received. Completeness information is necessary to determine whether DCO daily reporting is complete, which would assist the Commission in its validation and timely use of the reported information.

Additional details regarding the proposed reporting fields discussed above are included in the proposed new appendix C to part 39. The goal is to ensure that appendix C includes every data field that is needed to adequately capture the new information that would be reported under the proposal.[21] Therefore, the Commission requests comment on each of the proposed new daily reporting fields in appendix C, and specifically, whether there are any additional fields that would be necessary or would make the reported data more meaningful. The Commission further requests comment on whether, to the extent that commenters have concerns regarding the proposed requirement that DCOs report timing information for variation margin calls and payments, DCOs should instead be required to report whether calls and payments were made during a broader timeframe, such as at the beginning, middle, or end of day, and how those timeframes should be defined. The Commission also requests comment on which of the two proposed approaches for reporting completeness information is preferable, or whether there are additional alternatives that may be superior.

Lastly, the Commission currently receives from DCOs daily position information that includes settlement prices for a range of contracts with open interest. The Commission is considering whether to also require that DCOs provide the current settlement prices and related information published by designated contract markets for futures and options contracts with no open interest in order to enhance the Commission's ability to perform futures and options risk surveillance by using complete settlement price data. The Commission would likely require the current settlement price, settlement currency, and settlement date, to the extent that a DCO possesses this information. The Commission requests comment on the costs to DCOs, if any, associated with providing this information on a daily basis, and whether the fields listed are necessary or appropriate to capture the information that would be reported.

D. Individual Customer Account Identification Requirements—§ 39.19(c)(1)(i)(D)

Regulation 39.19(c)(1)(i)(D) requires the daily reporting of end-of-day positions for each clearing member, by house origin and by each customer origin, and by each individual customer account. The Commission recently amended this provision to require, among other things, that a DCO identify each individual customer account using both a legal entity identifier (LEI) and any internally-generated identifier, where available, within each customer origin for each clearing member.[22] The Commission intended that this requirement apply to all instances within § 39.19(c)(1) where a DCO is required to report information at the individual customer account level. However, this may not have been clear because paragraph (D) addresses only the reporting of end-of-day positions.

The Commission wishes to clarify that the requirement that a DCO identify each individual customer account by LEI and internally-generated identifier was not intended to be limited to end-of-day position reporting under paragraph (D), but rather to apply to all instances in § 39.19(c)(1) where a DCO is required to report information at the individual customer account level. Under the proposal, § 39.19(c)(1)(i)(A) is the only other paragraph within § 39.19(c)(1) that requires a DCO to report information at the individual customer account level. The Commission therefore proposes to amend § 39.19(c)(1)(i)(A) to specify that when a DCO reports initial margin requirements and initial margin on deposit by each individual customer account as required, the DCO also must identify each individual customer account by LEI and internally-generated identifier, where available.

The Commission further seeks to clarify that the requirement that a DCO identify each individual customer account using both an LEI and any internally-generated identifier, ''where available,'' is intended to mean this information is required, in either case,

[20] The Commission believes that the proposed requirement that each DCO include in its daily report information that reflects that the daily report is complete is a ''format and manner'' requirement under § 39.19(b)(1).

[21] In practice, to the extent that a DCO later finds that there are additional data fields that would be necessary or appropriate to better capture the information that is being reported, the Commission is proposing to add, as new § 39.19(c)(1)(iii), the ability for a DCO to, after consultation with the Division, voluntarily submit any additional data fields it believes would be necessary or appropriate.

[22] 85 FR at 4817.

only if the DCO has the information associated with an account. The Commission is therefore proposing a technical change to make this more clear.

E. Daily Reporting of Margin Model Back Testing—§ 39.19(c)(1)(i)

The Commission is proposing to add to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports the results of the margin model back testing that a DCO is required to perform daily pursuant to § 39.13(g)(7)(i). Some DCOs currently provide back testing information to the Commission on a voluntary basis. Back testing is critical to evaluating the efficacy of DCO margin models, which are in turn a critical component of DCO risk management. Receiving back testing information from DCOs on a daily basis would enhance the Commission's supervision and oversight of DCOs and the derivatives markets by enabling the Commission to evaluate and monitor margin model performance on an ongoing basis, and also would provide the Commission with the information necessary to conduct its own analysis of margin model performance.

The Commission is also proposing to add to new appendix C to part 39 the data fields it believes would be relevant and necessary to capture the back testing results that, if adopted, would be reported under this provision. As previously stated, the Commission's goal is to ensure that appendix C includes every data field that is needed to adequately capture the new information that would be reported under the proposal. Therefore, the Commission requests comment on each of the proposed reporting fields in appendix C for back testing results, and specifically, whether there are any additional fields that would be necessary or would make the reported data more meaningful.

F. Fully Collateralized Positions—§ 39.19(c)(1)(ii)

The Commission previously amended § 39.19(c)(1)(i) to provide that the daily reports required by that regulation are not required for fully collateralized positions.[23] The Commission did not amend § 39.19(c)(1)(ii), which provides that the daily reports required by § 39.19(c)(1)(i) are required for futures, options, swaps, and certain securities positions. Although § 39.19(c)(1)(ii) merely expands on § 39.19(c)(1)(i) and has no independent force or effect, the Commission is proposing to amend § 39.19(c)(1)(ii) to clarify that it does not apply to fully collateralized positions.

G. Reporting Change of Control of the DCO—§ 39.19(c)(4)(ix)(A)(1)

Regulation 39.19(c)(4)(ix)(A)(1) requires a DCO to report to the Commission any anticipated change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in at least a 10 percent change of ownership of the DCO. The Commission is proposing to amend this provision to require a DCO to report any change to the entity or person that holds a controlling interest, either directly or indirectly, in the DCO. Because the current rule is tied to changes in ownership of the DCO by percentage share of ownership, DCOs are not currently required to report all instances in which there is a change in control of the DCO. It is possible that a change in ownership of less than 10 percent could result in a change in control of the DCO. For example, if an entity increases its stake in the DCO from 45 percent ownership to 51 percent, it is possible that control of the DCO would change without any required reporting. In addition, in some instances, a DCO is owned by a parent company, and a change in ownership or control of the parent is not required to be reported under the current rule despite the fact that it could change corporate control of the DCO. The proposed changes to the rule would ensure that the Commission has accurate knowledge of the individuals or entities that control a DCO and its activities.

H. Reporting Changes to Credit Facility Funding and Liquidity Funding Arrangements—§ 39.19(c)(4)(xii) and (xiii)

Regulations 39.19(c)(4)(xii) and (xiii), respectively, require a DCO to report changes to credit facility funding arrangements and liquidity funding arrangements ''it has in place.'' The Commission is proposing to amend these provisions to clarify that the reporting requirements include reporting new arrangements as well as changes to existing ones. Although DCOs and the Commission have interpreted these requirements to include reporting new arrangements, a literal interpretation of these provisions, with a focus on the phrase ''it has in place,'' may potentially restrict the application of the reporting requirements only to changes in existing arrangements.

I. Reporting Issues With Credit Facility Funding Arrangements, Liquidity Funding Arrangements, and Custodian Banks—§ 39.19(c)(4)(xv)

Regulation 39.19(c)(4)(xv) requires that a DCO report to the Commission within one business day after any material issues or concerns arise regarding the performance, stability, liquidity, or financial resources of any settlement bank used by the DCO or approved for use by the DCO's clearing members. The Commission is proposing to amend § 39.19(c)(4)(xv) to require that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the DCO or approved for use by the DCO's clearing members.

As a part of the proposed amendments to § 39.19(c)(4)(xv), the Commission is proposing to change the threshold that triggers a DCO's reporting obligations. Specifically, the Commission is proposing to replace the current requirement that a DCO report to the Commission within one business day after any material issues or concerns arise, with the requirement that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns. Requiring a DCO to report issues or concerns when it becomes aware of them accounts for the possibility that there may be a delay between the time that an issue arises and when the DCO becomes aware of it.

Furthermore, although they provide different services to DCOs and may be relied upon by DCOs in differing circumstances, credit facility funding arrangements, liquidity funding arrangements, and custodian banks are similar to settlement banks in that they perform functions that are critical to the clearing process. The Commission recognizes that if a DCO encounters an issue with a settlement bank, it could potentially delay the DCO's ability to access its funds, which could impact the DCO's ability to meet its obligations; the same could be true with respect to issues with a DCO's credit facility funding arrangements, liquidity funding arrangements, and custodian banks. Therefore, it is important that the Commission be informed when a DCO experiences or becomes aware of any issues.

[23] *See* 85 FR 4800, 4805.

J. Reporting of Updated Responses to the Disclosure Framework for Financial Market Infrastructures—§ 39.19(c)(4)(xxv)

The Commission is proposing new § 39.19(c)(4)(xxv), which would set forth the requirement currently in § 39.37(b)(2) that, when a DCO updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions in accordance with § 39.37(b)(1), the DCO shall provide notice of those updates to the Commission. The proposal does not alter in any respect the substance of the reporting obligation currently specified in § 39.37(b)(2); it simply references this requirement in § 39.19 in furtherance of the goal of centralizing DCO reporting obligations in § 39.19.[24]

VI. Proposed Amendments to § 39.21(c)

Regulation 39.21 requires a DCO to publish on its website a variety of information designed to enable market participants to make informed decisions about using the clearing services provided by the DCO. The Commission is proposing several amendments to these requirements to better align a DCO's disclosure obligations with the type of clearing services that the DCO provides.

A. Publication of Margin-Setting Methodology and Financial Resource Package Information—§ 39.21(c)(3) and (4)

Regulation 39.21(c)(3) requires a DCO to publish on its website information concerning its margin-setting methodology. Regulation 39.21(c)(4) requires a DCO to publish on its website, and update as required, the size and composition of the financial resource package available in the event of a clearing member default.

The Commission is proposing to amend §§ 39.21(c)(3) and (4) to provide that a DCO that clears only fully collateralized positions should instead indicate on its website that it clears such positions in satisfaction of these requirements. As the Commission has previously recognized, fully collateralized positions are designed to have on deposit a sufficient amount of funds, at all times, to cover the maximum potential loss that could be incurred in connection with a position.[25] Therefore, the need to collect margin and maintain a financial resource package to be used in the event of a clearing member default is eliminated by requiring full collateralization. The Commission has therefore provided certain carveouts for DCOs that clear fully collateralized positions in its part 39 regulations.[26] This proposed change would be consistent with such carveouts.

B. Publication of List of Clearing Members—§ 39.21(c)(7)

Regulation 39.21(c)(7) requires a DCO to publish on its website a current list of its clearing members. At a typical DCO, the risk of loss from the default of a clearing member is mutualized among the clearing members, making it useful for each existing or prospective clearing member to know who the others are. Publishing a list of clearing members is less useful where the DCO clears only fully collateralized positions and its clearing members generally do not pose any risk to each other. However, existing or potential customers of a futures commission merchant (FCM) may find it useful to be able to verify whether that FCM is a clearing member at any DCO, including DCOs that clear only fully collateralized positions. For these reasons, the Commission is proposing to amend § 39.21(c)(7) to provide that a DCO may omit any clearing member that clears only fully collateralized positions and is not an FCM clearing member from the list of clearing members that the DCO must publish on its website.[27]

VII. Proposed Amendments to § 39.37(c) and (d)

Regulation 39.37 requires each systemically important DCO (SIDCO) and each DCO that elects to comply with subpart C of part 39 of the Commission's regulations (subpart C DCO) to disclose certain information to the public and to the Commission. Regulations 39.37(c) and (d) require, respectively, a SIDCO or subpart C DCO to ''disclose, publicly, and to the Commission'' transaction data, and information regarding the segregation and portability of customers' positions and funds. The Commission is proposing to amend these provisions to clarify that public disclosure of the information is sufficient and a separate report directly to the Commission is not required. To that end, the Commission is proposing to replace the phrase ''disclose, publicly, and to the Commission'' with the phrase ''publicly disclose'' in § 39.37(c) and (d).

VIII. Proposed Amendments to § 140.94(c)(10)

Regulation 140.94(c) is a delegation of authority from the Commission to the Director of the Division of Clearing and Risk to perform certain specific functions. The Commission is proposing to amend § 140.94(c)(10) to delegate to the Director the authority in existing § 39.19(a) to require a DCO to provide to the Commission the information specified in § 39.19 and any other information that the Commission determines to be necessary to conduct oversight of the DCO, and in existing § 39.19(b)(1) to specify the format and manner in which the information required by § 39.19 must be submitted to the Commission.

IX. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[28] The amendments proposed by the Commission will affect only DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[29] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[30] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[31] provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (OMB). This proposed rulemaking contains reporting

[24] *See id.* at 4819.

[25] *See id.* at 4804.

[26] *Id.*

[27] The proposed amendment to § 39.21(c)(7) is consistent with the position previously taken by the Division. *See, e.g.,* CFTC Letter No. 19–15 (July 1, 2019) (no-action letter to Eris Clearing, LLC, regarding several Commission regulations, including § 39.21(c)(7), due to Eris Clearing, LLC's fully collateralized clearing model). To the extent that a DCO received a no-action letter from the Division regarding compliance with § 39.21(c)(7), the change in the requirement, if adopted, would supersede those letters.

[28] 5 U.S.C. 601 *et seq.*

[29] 47 FR 18618 (Apr. 30, 1982).

[30] *See* 66 FR 45604, 45609 (Aug. 29, 2001).

[31] 44 U.S.C. 3501 *et seq.*

and recordkeeping requirements that are collections of information within the meaning of the PRA. If adopted, responses to the collections of information would be required to obtain a benefit. This section addresses the impact that the proposal will have on the existing information collection associated with part 39, ''Requirements for Derivatives Clearing Organizations, OMB control number 3038–0076.''

1. Subpart B—Requirements for Compliance With Core Principles

a. Risk Management

The Commission is proposing new § 39.13(h)(5)(iii) to provide that a DCO that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) those clearing members that clear only fully collateralized positions. These requirements would still apply in the case of clearing members that clear fully collateralized positions but also margined products. This change will reduce the burden for DCOs that clear fully collateralized products, but does not affect the burden for the majority of DCOs that are subject to daily reporting requirements, as only four of the fifteen DCOs clear fully collateralized positions. As a result, the Commission believes that this reduction would have a negligible impact on the overall reporting burden for DCOs, and therefore, the Commission is leaving the reporting burden for these reporting requirements unchanged.

b. Treatment of Funds

The Commission is proposing to amend § 39.15(b)(2), which only applies when a DCO and its clearing members seek to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of Sections 4d(a) or 4d(f) of the CEA. The Commission proposes to consolidate paragraphs (b)(2)(i) and (b)(2)(ii) and renumber paragraphs accordingly. These changes pertain only to the structure and organization of the regulation and therefore do not impact the reporting requirement. The Commission is further proposing to amend § 39.15(b)(2) to clarify that the requirement in paragraph (b)(2)(i)(G) that a DCO discuss the systems or procedures that the DCO has implemented to oversee its clearing members' risk management of eligible products may be addressed by describing why existing risk management systems and procedures are adequate, and to add language clarifying that the requirements and standard of review of § 40.5 apply to commingling rule submissions. Because these proposals are mere clarifications of existing requirements, they also have no impact on the reporting burden.

Similarly, the Commission is further proposing to remove existing paragraph (b)(2)(iii), which provides that the Commission may request additional information in support of a rule submission filed under existing paragraph (b)(2)(i) or (ii), and add new paragraph (b)(2)(viii), which provides that the Commission may request supplemental information to evaluate the DCO's submission and requires a DCO to submit any other information necessary for the Commission to evaluate the DCO's rule's compliance with the CEA and the Commission's regulations. This does not impact the reporting burden because proposed paragraph (b)(2)(viii), like existing paragraph (b)(2)(iii), would ensure that the Commission can consider all information relevant to the rule submission. Although existing paragraph (b)(2)(iii) does not contain explicit language similar to new paragraph (b)(2)(viii)'s requirement that the DCO submit any other information necessary for the Commission to evaluate the rule's compliance with the CEA and the Commission's regulations, the fact that existing paragraph (b)(2)(iii) permits the Commission to request such information implies a DCO's obligation to supply it. Simply making this implication explicit does not impact the reporting burden.

The Commission is proposing to delete paragraphs (b)(2)(i)(C), (E), (H), and (L) because they require a DCO to submit information the Commission can already access or has not needed in its review of commingling rule submissions. This proposed change would decrease the reporting burden. In addition, the Commission is proposing to remove existing paragraph (b)(2)(i)(I), which requires the DCO to provide information related to its margin methodology, while adding related paragraph (b)(2)(vii), which would require that a DCO discuss whether it anticipates allowing portfolio margining of commingled positions, describe and analyze any margin reductions it would apply to correlated positions, and make an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4). These changes would collectively decrease the reporting burden because the requirements proposed to be removed through the deletion of paragraph (b)(2)(i)(I) are, as a whole, more burdensome than the requirements proposed to be added in paragraph (b)(2)(vii). Similarly, the Commission is proposing to remove the requirement in existing paragraph (b)(2)(i)(K) to discuss a DCO's default management procedures generally and maintain only the requirement to address default management procedures unique to the products eligible for commingling and to move that requirement to paragraph (b)(2)(vi). This narrowing of the scope of the requirement reduces the reporting burden on the relevant DCOs.

The Commission is proposing to amend paragraph (b)(2)(i)(B), which requires the DCO to provide an analysis of the risk characteristics of the products that would be eligible for commingling, to specify that the DCO should discuss any risk characteristics of products to be commingled that are unusual in relation to the other products the DCO clears and how the DCO plans to manage any risks identified. Because such disclosure was not previously explicitly required, and because DCOs that would not otherwise have addressed such issues in their analysis of the risk characteristics of the eligible products would now be required to do so, this would increase the reporting burden.

The Commission proposes to amend paragraph (b)(2)(i)(F) (and renumber it as (b)(2)(iv)), which currently requires the DCO to describe the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products, to require only that the DCO describe any additional requirements that would apply to clearing members permitted to commingle eligible products. The Commission believes that the proposed amendment would have no impact on the reporting burden. Although the proposed requirement that the DCO describe any additional requirements is broader than the current requirement to describe financial, operational, and managerial standards or requirements, the existing paragraph requires the DCO to report even if no additional requirements would apply. The proposal only requires reporting when additional requirements are, in fact, applicable.

The Commission believes that the reductions in the reporting burden resulting from the proposed deletion of paragraphs (b)(2)(i)(C), (E), (H), and (L) and the narrowing of the reporting burden resulting from the proposed deletions of paragraphs (b)(2)(i)(I) and (K) (even after giving effect to the addition of new paragraphs (b)(2)(vi)

and (vii)) are at least as great as the increase in the reporting burden resulting from the proposed amendments to paragraph (b)(2)(i)(B). Because the Commission lacks the data to fully quantify each of these changes, it is conservatively estimating that these changes collectively do not materially impact the reporting burden. The Commission is of the view that to the extent that the cross-margining program would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the proposed changes are already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

c. Daily Reporting

The Commission is proposing to amend § 39.19(c)(1)(i)(A) to clarify that the existing requirement to identify individual customer accounts by LEI and internally-generated identifier was intended to apply to all instances in § 39.19(c)(1) where reporting is required at the individual customer account level, and not only to end-of-day positions. The Commission therefore proposes to amend § 39.19(c)(1)(i)(A) to specify that when a DCO reports initial margin requirements and initial margin on deposit by each individual customer account as required, the DCO also must identify each individual customer account by LEI and internally-generated identifier, where available. The proposed clarification would not affect the burden on DCOs because DCOs already provide this information and the impact of this amendment is negligible on the existing burden.

The Commission also is proposing to amend § 39.19(c)(1)(i)(B) and (C), which require a DCO to report daily variation margin and cash flow information by house origin and separately by customer origin and by each individual customer account, to remove the requirement that a DCO report daily variation margin and cash flows by individual customer account. This proposed change is anticipated to result in a negligible decrease from the current burden of 0.5 hours per report.[32]

The Commission is also proposing to add to part 39 an appendix that would codify the existing reporting fields for the daily reporting requirements in § 39.19(c)(1). The codification of existing reporting fields in new appendix C would not change the reporting burden.[33]

The Commission also is proposing to add new fields within proposed appendix C that would further implement the existing daily reporting requirements under § 39.19(c)(1). Specifically, the Commission is proposing to require that a DCO include in its daily reports, with regard to interest rate swaps only, the delta ladder, gamma ladder, vega ladder, zero rate curves, and yield curves that the DCO uses in connection with managing risks associated with interest rate swaps positions. The Commission also is proposing to require a DCO that clears interest rate swaps, forward rate agreements, or inflation index swaps to include in its daily reports the actual trade date for each position, along with an event description. The Commission is further proposing to require that each DCO include in its daily reports timing information about variation margin calls and payments, and also to include in its daily reports information that reflects that the daily report is complete. Lastly, in connection with the proposal to add to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports the results of its required daily margin model back testing, the Commission is proposing to add to proposed appendix C the additional data fields necessary to implement this requirement.

With respect to the proposal to add new fields to proposed appendix C, and the proposal to add to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports the results of its required margin model back testing, the Commission believes the incremental capital investment costs associated with implementing these proposed requirements would be negligible. In many cases, the proposed fields are data that are already being used for DCO risk management and operations, and in some cases are already being reported to the Commission on a voluntary basis. Further, the Commission believes that any capital investment implementation for the reporting of these proposed fields would leverage the DCO's existing server architecture that could be scaled up to meet the proposed requirements with negligible costs. The estimated start-up costs, including programming or coding, as well as testing, quality assurance, and compliance review costs, are estimated[34] to be approximately $109,574.43 per DCO.[35]

Lastly, because the Commission understands that the preparation and submission of the daily reports required under § 39.19(c)(1)(i) is largely automated, the Commission estimates that the proposal to add new fields to proposed appendix C, and the proposal to add to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports

[32] DCOs currently are not reporting variation margin and cash flow information by each individual customer account because the Division issued a no-action letter addressing compliance with the amended requirements in § 39.19(c)(1). *See* CFTC Letter No. 21–01 (Dec. 31, 2020); *see also* CFTC Letter No. 21–31 (Dec. 22, 2021). As noted, the proposed amendments to § 39.19(c)(1)(i)(B) and (C) would eliminate the requirement for which additional time was provided in the staff letter.

[33] The current burden estimates for complying with the daily reporting requirements in § 39.19(c)(1) included in OMB Control No. 3038–0076 take into account the burden associated with reporting in accordance with the Reporting Guidebook.

[34] To estimate the start-up costs, the Commission relied upon internal subject matter experts in its Divisions of Data and Clearing and Risk to estimate the amount of time and type of DCO personnel necessary to complete the coding, testing, quality assurance, and compliance review. The Commission then used data from the Department of Labor's Bureau of Labor Statistics from May 2021 to estimate the total costs of this work. According to the May 2021 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/oes/current/oes_nat.htm,* the mean salary for a computer systems analyst in management companies and enterprises is $103,860. This number is divided by 1800 work hours in a year to account for sick leave and vacations and multiplied by 2.5 to account for retirement, health, and other benefits, as well as for office space, computer equipment support, and human resources support, all of which yields an hourly rate of $144.25. Similarly, a computer programmer has a mean annual salary of $102,430, yielding an hourly rate of $142.26; a software quality assurance analyst and tester has a mean annual salary of $99,460, yielding an hourly rate of $138.14; and a compliance attorney has a mean annual salary of $198,900, yielding an hourly rate of $276.25.

[35] The estimate of total start-up costs consists of the following: $14,101.10 for the delta ladder, gamma ladder, vega ladder, and the zero rate curves, based on 20 hours of systems analyst time, 40 hours of programmer time, and 40 hours of tester time; $7,248.61 for adding interest rate, forward rates, and end of day position fields, based on 8 hours of systems analyst time, 4 hours of programmer time, and 40 hours of tester time; $39,907.22 for the payment file, based on 120 hours of systems analyst time, 120 hours of programmer time, and 40 hours of tester time; $14,140.83 for the manifest file, based on 40 hours of systems analyst time, 40 hours of programmer time, and 20 hours of tester time; and $22,676.67 for adding the back testing fields, based on 40 hours of systems analyst time, 80 hours of programmer time, and 40 hours of tester time. The estimate of total start-up costs also includes $11,500.00 for compliance attorney review. A DCO may choose to employ a manifest file or alternatively a file count to the account and end of day position files. If a DCO elects the latter, the estimate of total start-up costs is reduced to $106,120.38, because while adding a manifest file is estimated to cost $14,140.83, adding file count information is estimated to cost $10,686.78 (based on 20 hours of systems analyst time, 16 hours of programmer time, and 40 hours of tester time). Additionally, the Commission estimates that requiring DCOs to report pricing information for contracts without open interest, which the Commission is considering, would impose non-capital start-up costs of $34,137.22 on each DCO, based on 80 hours of systems analyst time, 120 hours of programmer time, and 40 hours of tester time. The $34,137.22 estimate is not included in the estimated total start-up costs of $109,574.43 per DCO because, although the Commission is considering this requirement and is requesting comment, it has not otherwise proposed this requirement.

the results of the margin model back testing, will result in a negligible increase from the current estimate of 0.5 burden hours per report.

The aggregate burden estimate for daily reporting remains as follows:

Estimated number of respondents: 13.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 1625.

d. Event-Specific Reporting

Regulation 39.19(c)(4) requires a DCO to notify the Commission of the occurrence of certain events; § 39.19(c)(4)(ix)(A)(1) requires a DCO to report any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in at least a 10 percent change of ownership of the DCO. The Commission is proposing to amend § 39.19(c)(4)(ix)(A)(1) to require the reporting of any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in a change to the entity or person holding a controlling interest in the DCO, whether through an increase in direct ownership or voting interest in the DCO or in a direct or indirect corporate parent entity of the DCO. This increases the reporting requirement. However, the changes of control contemplated by the proposed amendment occur infrequently. In addition, DCOs have typically notified the Commission of such changes of control even if not technically required by the current regulations. Finally, although changes of control usually require the preparation of documents such as a purchase agreement and the amendment of corporate governance documents and organizational charts, those burdens are a result of the change in control itself and not of the reporting requirement. The administrative burden of notifying the Commission—preparing a notification, attaching relevant but pre-existing supporting documents such as the revised organizational chart, and submitting to the Commission—is negligible. Therefore, the increase in the reporting requirement resulting from this proposed amendment is negligible.

Regulation 39.19(c)(4)(xii) and (xiii) require notification of changes in a liquidity funding arrangement or settlement bank arrangement. The Commission is proposing to amend these regulations to clarify that the reporting requirements include reporting new arrangements as well as changes to existing ones. The proposed clarification would not affect the burden on DCOs because such reporting is already implied in the regulation.

Separately, the Commission is proposing to amend § 39.19(c)(4)(xv) to add credit facility funding arrangements, liquidity funding arrangements, and custodian banks to the list of arrangements or banks for which the DCO must report to the Commission any issues or concerns of which the DCO becomes aware. Although this increases the number of entities or arrangements for which reporting may be required, given that a DCO is only required to report these issues when it becomes aware of them, and given that these events are not very common, any increase should be negligible.

The Commission is proposing to revise § 39.18(g) to delete the materiality threshold. Proposed changes would also require notification of each security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of any automated system, or any information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities; as well as operator errors that may impair the operation, reliability, security, or capacity of an automated system. The various proposals are intended, in part, to ensure that the Division receives notice of the full spectrum of cyberattacks and cyberthreats that a DCO experiences, including partial breaches, near misses, and cyberattacks and cyberthreats affecting third-party systems that a DCO relies upon, and that the Division receives notice when a DCO's systems or information, or external systems or information that a DCO relies upon, are, or may be, compromised by a security incident or threat, irrespective of whether the incident or threat causes, or could cause, actual impairment to the affected systems. Due to the proposed changes to § 39.18(g), the Commission anticipates some increase in the reporting burden on DCOs. Based on recent levels of reporting, the Commission estimates that these changes will require DCOs to file an additional 4 reports per year, on average. The reporting burden of § 39.18(g) is covered by § 39.19(c)(4)(xxii), and therefore is included in the burden estimate for § 39.19(c)(4).

Finally, the Commission is proposing to add § 39.19(c)(4)(xxv) to centralize an existing reporting obligation under § 39.37(b)(2) in § 39.19. This does not create a new reporting obligation. The Commission is also proposing to revise §§ 39.37(c) and (d) to remove the requirement to make certain disclosures to the Commission while retaining a requirement to make such disclosures publicly. This would cause a negligible decrease in costs that would not affect the reporting burden. The reporting burden under existing § 39.37 is covered in the PRA estimate for that regulation.

The aggregate burden estimate of § 39.19(c)(4) adjusted for the changes described above is as follows:

Estimated number of respondents: 13.

Estimated number of reports per respondent: 18

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 117.

e. Public Information

The Commission is proposing to revise § 39.21(c)(3) and (4) to exclude DCOs that clear only fully collateralized positions from the specific disclosure requirements of these paragraphs. Similarly, the Commission is proposing to amend § 39.21(c)(7), which requires a DCO to publish on its website a current list of its clearing members, to provide that a DCO may omit any clearing member that clears only fully collateralized positions and is not an FCM from the list of clearing members that it must publish on its website. Because such DCOs are still required to report per other parts of § 39.21, such as to disclose the terms and conditions of each contract cleared, the fees it charges its members, and daily settlement prices, volumes, and open interest for each contract, the number of respondents would remain unchanged. The proposed changes do not affect the burden for the majority of DCOs that are subject to the public disclosure requirements. For fully collateralized DCOs, the proposed changes would result in a negligible decrease in the amount of time required per report. The aggregate estimated burden for § 39.21 remains as follows:

Estimated number of respondents: 13.

Estimated number of reports per respondent: 4.

Average number of hours per report: 2.

Estimated gross annual reporting burden: 104.

Request for Comment. The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160 or from *http://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

• The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;

• (202) 395–6566 (fax); or

• *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[36] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors (collectively referred to herein as Section 15(a) factors).

The Commission recognizes that the proposed amendments impose costs. The Commission has endeavored to assess the anticipated costs and benefits of the proposed amendments in quantitative terms, including PRA-related costs, where feasible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed amendments in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the proposed amendments. Additionally, any initial and recurring compliance costs for any particular DCO will depend on the size, existing infrastructure, level of clearing activity, practices, and cost structure of the DCO.

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs, particularly from existing DCOs that can provide quantitative cost data based on their respective experiences. Commenters may also suggest other alternatives to the proposed approach.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this proposed rulemaking is the existing statutory and regulatory framework applicable to DCOs, including: (1) the DCO core principles set forth in Section 5b(c)(2) of the CEA; (2) the information requirements associated with commingling customer funds and positions in futures and swaps in the same account under § 39.15(b)(2); (3) the reporting obligations under § 39.18(g) related to a DCO's system safeguards; (4) daily reporting requirements under § 39.19(c)(1); (5) event-specific reporting requirements under § 39.19(c)(4); (6) public information requirements under § 39.21(c); (7) disclosure obligations for SIDCOs and subpart C DCOs under § 39.37; and (8) delegation of authority provisions under § 140.94.

The Commission notes that this consideration is based on its understanding that the futures and swaps market functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are prospective Commission registrants; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant futures and swaps activity, whether based on their actual occurrence in the United States or on their connection with, or effect on U.S. commerce pursuant to, Section 2(i) of the CEA.[37]

3. Proposed Amendments to § 39.13(h)(5)

a. Benefits

The Commission is proposing new § 39.13(h)(5)(iii), which would provide that a DCO that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) those clearing members that clear only fully collateralized positions. These requirements would still apply in the case of clearing members that clear fully collateralized positions but also margined products.

Fully collateralized positions do not expose DCOs to many of the risks that

[36] 7 U.S.C. 19(a).

[37] Pursuant to Section 2(i) of the CEA, activities outside of the United States are not subject to the swap provisions of the CEA, including any rules prescribed or regulations promulgated thereunder, unless those activities either have a direct and significant connection with activities in, or effect on, commerce of the United States; or contravene any rule or regulation established to prevent evasion of a CEA provision enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376. 7 U.S.C. 2(i).

traditionally margined products do. Full collateralization prevents a DCO from being exposed to credit or default risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary, including § 39.13(h)(5). The Commission is proposing to amend this provision in order to provide greater clarity to DCOs and future applicants for DCO registration regarding how § 39.13(h)(5) applies to DCOs that clear fully collateralized positions.

b. Costs

The Commission does not anticipate any costs associated with this change, as it would codify the removal of requirements that need not apply to fully collateralized positions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in Section 15(a) of the CEA. In consideration of Section 15(a)(2)(B) of the CEA, the Commission believes that the proposal may increase operational efficiency for DCOs that clear fully collateralized positions. The proposed amendments should not impact the protection of market participants and the public, the financial integrity of markets, or sound risk management practices, as the requirements that the Commission is proposing to exclude for fully collateralized positions do not further these factors when applied to such positions. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments.

4. Proposed Amendments to § 39.15(b)(2)

a. Benefits

The Commission is proposing to amend § 39.15(b)(2) to clarify its requirements and revise the information a DCO must provide to the Commission when it seeks to commingle customer positions and associated funds from different account classes. The Commission anticipates the proposed amendments will help applicants, the Commission, and the public to focus on those issues that are most important in considering the submission, and will generally reduce compliance burdens on DCOs.

Based on its experience in reviewing commingling rule submissions, the Commission believes the proposed changes to the information requirements would improve the quality of future submissions and enhance protection of market participants. The existing requirements often result in rule submissions that provide information the Commission already has and lack sufficient focus on the commingling itself, making it difficult for both the Commission and the public to properly assess the risks that commingling of customer funds may pose. The amendments would improve the quality of the submissions by providing the information needed to evaluate the risks posed to customers by commingling products that otherwise would be held in separate accounts.

The proposed amendments would reduce compliance burdens for DCOs by removing existing paragraphs (b)(2)(i)(C), (E), (H), and (L), provisions that call for submission of information the Commission can otherwise access or has not needed in its review of commingling rule submissions. Replacing existing paragraph (b)(2)(i)(I) and adding the related proposed § 39.15(b)(2)(vii) would focus DCO efforts on providing the most useful information on the topic of margin methodology, and eliminates a requirement to provide margin methodology information with which the Commission is already familiar. Similarly, by maintaining only that part of paragraph (b)(2)(i)(K) concerning default management procedures unique to the products eligible for commingling, the proposed regulation would focus the discussion of the DCO's default management procedures on changes necessitated by the commingling of eligible products rather than general information on default management procedures already available to the Commission.

b. Costs

As discussed above, the Commission expects that the proposed amendments to § 39.15(b)(2) will decrease DCOs' costs associated with seeking commingling approval. The Commission's proposal most meaningfully reduces costs by no longer requiring a DCO to produce certain information it was previously required to provide to the Commission. This is partly offset by the addition of new information requirements. Proposed paragraph (b)(2)(vii) would require information concerning portfolio margining that is largely a subset of the margin methodology information required by existing paragraph (b)(2)(i)(I). The new requirement in this paragraph amounts to a one sentence confirmation of compliance with § 39.13(g)(4). Proposed paragraph (b)(2)(viii), intended to ensure a DCO provides all information the Commission needs to evaluate a commingling rule submission, incorporates the requirements of existing paragraph (b)(2)(iii). Further, the amendment to existing paragraph (b)(2)(i)(B) on risk characteristics, in addition to focusing the discussion on unusual characteristics, extends the analysis to include a discussion of the DCO's management of identified risk characteristics, which is information that should likely be readily available to DCOs. Likewise, to the extent proposed paragraph (b)(2)(vi) on default management procedures extends beyond the scope of existing paragraphs (b)(2)(i)(J) or (b)(2)(i)(K), DCOs should already have this information.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.15(b)(2) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments will have a beneficial effect on the protection of market participants and on sound risk management practices. The amendments better focus the DCO submissions on risk management considerations that are relevant to address the commingling of customer positions and associated funds as proposed, and assure that DCOs provide the Commission with the information it needs to consider the regulatory adequacy of their efforts. These activities are ultimately directed towards protecting market participants whose accounts are exposed to risks the commingled positions introduce. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.15(b)(2).

5. Notification of Exceptional Events—§ 39.18(g)

a. Benefits

The Commission is proposing to amend § 39.18(g)(1) to expand the scope of hardware or software malfunctions for which a DCO must provide notice to the Division by proposing to delete the materiality element from the requirement that such malfunctions materially impair, or create a significant likelihood of material impairment of, the DCO's automated systems. The

Commission also is proposing to amend § 39.18(g)(1) to add a new requirement that a DCO notify the Commission of any operator error that impairs, or creates a significant likelihood of impairment of, automated system operation, reliability, security, or capacity. Additionally, the Commission is proposing to add new paragraph § 39.18(g)(2) that incorporates with proposed modifications the requirement currently in paragraph (g)(1) that a DCO notify the Division of security incidents and threats. The proposed modifications to paragraph (g)(2) expand the notification requirement by: (1) eliminating the existing requirement that a DCO report only targeted threats in favor of the proposed requirement that it report all qualifying threats; (2) replacing the requirement that a DCO notify the Division of security incidents and threats that impair, or could impair, the DCO's automated systems with the requirement that a DCO notify the Division of security incidents or threats that compromise or could compromise the DCO's automated systems; and (3) adding the requirement that a DCO notify the Division of security incidents or threats that compromise or could compromise the information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities.

By removing the qualifier that events be material, the proposed amendments to § 39.18(g) will benefit DCOs by providing additional clarity and certainty regarding their obligations to notify the Division of hardware or software malfunctions, operator errors, or security incidents or threats, including security incidents or threats affecting third parties that DCOs rely upon. Additionally, removing the qualifier that only targeted threats must be reported to the Division, and also specifying that threats to third parties must be reported, may enhance the ability of the Division to inform other DCOs of emerging cyberthreats and the Commission to better assess possible emerging threats across DCOs.

b. Costs

The Commission anticipates that the proposed amendments to § 39.18(g) may impose additional costs on DCOs because DCOs may be required to provide additional and more frequent notifications to the Division regarding reportable events. Although it is difficult to quantify these costs because they depend almost entirely upon the occurrence of external events that are outside of the DCO's control, the Commission estimates, based on recent levels of reporting, that these changes will require DCOs to file an additional four reports per year, on average. The Commission estimates that this additional reporting will cost each DCO approximately $152 per year.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.18(g) in light of the specific considerations identified in Section 15(a) of the CEA. To the extent that the proposed amendments to § 39.18(g) reduce, through increased awareness and vigilance or through improved information collection and dissemination, the likelihood or severity of hardware or software malfunctions, operator errors, or security incidents or threats, then the proposed amendments may have a beneficial effect on the protection of market participants, and on ensuring or enhancing sound risk management practices by DCOs. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.18(g).

6. Removing the Requirement To Report Variation Margin and Cash Flow Information by Individual Customer Account in § 39.19(c)(1)(i)(B) and (C)

a. Benefits

The Commission is proposing to amend § 39.19(c)(1)(i)(B) and (C) to remove the requirement that DCOs report to the Commission on a daily basis variation margin and cash flows by individual customer account. After this requirement was adopted, the Commission learned that the operational and technological requirements, including the related data integrity and validation requirements, are significantly greater than originally anticipated. Indeed, the burden of these requirements would extend beyond DCOs and affect clearing members as well. In removing these requirements from § 39.19(c)(1)(i)(B) and (C), the Commission anticipates benefits to DCOs and their clearing members in that their operational, technological, and compliance burdens would be reduced.

b. Costs

The Commission expects that DCOs and their clearing members will not incur any costs related to the proposed amendments to § 39.19(c)(1)(i)(B) and (C), as the Commission is proposing to remove existing requirements.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.19(c)(1)(i)(B) and (C) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments to § 39.19(c)(1)(i)(B) and (C) would have a moderately beneficial effect by reducing technological, operational, and compliance burdens of DCOs, and of their clearing members. The Commission also believes that the proposed amendments would not have any effect on protection of market participants and the public or on sound risk management practices because, although the Commission is slightly reducing the amount of information that DCOs must report to the Commission, the Commission is confident that it will continue to receive from DCOs sufficient information to effectively and efficiently supervise and oversee DCOs and the derivatives markets. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.19(c)(1)(i)(B) and (C).

7. Codifying the Existing Reporting Fields for the Daily Reporting Requirements in New Appendix C to Part 39

a. Benefits

The Commission is proposing to add a new appendix C to part 39 that would codify the existing reporting fields for the daily reporting requirements in § 39.19(c)(1). Until now, the instructions, reporting fields, and technical specifications for daily reporting have been contained in the Reporting Guidebook, which the Division provides to DCOs to facilitate reporting pursuant to § 39.19(c)(1). Although this proposal will not result in material benefit to currently-registered DCOs, the Commission believes that the proposal may benefit prospective DCO applicants, as well as members of the industry and general public, by providing a detailed list of DCO daily reporting obligations, in contrast to the more general requirements in § 39.19(c)(1).

b. Costs

The Commission does not expect that DCOs will incur increased costs related to the proposal to codify the reporting fields from the Reporting Guidebook as an appendix to part 39 DCOs have been relying on the Reporting Guidebook for nearly a decade to satisfy their daily

reporting obligations under § 39.19(c)(1). Codifying these requirements into a regulatory appendix does not alter the existing burden that DCOs have in complying with § 39.19(c)(1).

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposal to codify the Reporting Guidebook as an appendix to part 39 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission has considered the Section 15(a) factors and believes that they are not implicated by the proposal to add a new appendix to part 39 that codifies the reporting fields set forth in the existing Reporting Guidebook.

8. Additional Proposed Reporting Fields for the Daily Reporting Requirements—§ 39.19(c)(1)

a. Benefits

The Commission is proposing to add several new daily reporting fields that would be incorporated into new appendix C to part 39. The Commission is proposing to require that DCOs that clear interest rate swaps include in their daily reports the delta ladder, gamma ladder, vega ladder, zero rate curves, and yield curves that those DCOs use in connection with managing risks associated with interest rate swaps positions. The Commission also is proposing to require that DCOs include in their daily reports timing information about variation margin calls and payments. Furthermore, the Commission is proposing to require that DCOs that clear interest rate swaps, forward rate agreements, or inflation index swaps include in their daily reports the actual trade date for each position along with an event description. Lastly, the Commission is proposing to require DCOs to include in their daily reports information that reflects that the daily report is complete.

This information would allow the Commission to conduct more effective oversight of DCOs, particularly in connection with identifying positions that create the most risk to the DCO and its clearing members, thereby enhancing the protections afforded to the markets generally. Furthermore, the Commission believes that timing information regarding variation margin calls and payments is an important component of understanding potential liquidity issues at DCOs, especially in circumstances where liquidity issues involving a single clearing member may have the potential to affect multiple DCOs.

b. Costs

The Commission expects that the proposal to require DCOs to include in their daily reports timing information about variation margin calls and payments could impose a significant burden on DCOs, especially to the extent that DCOs employ systems that do not automatically affix a timestamp to these processes, or that cannot be modified to do so at a reasonable cost. The Commission requests comment on the burdens associated with this aspect of the proposal, as well as any burdens associated with the potential alternative of, in lieu of reporting the exact time of variation margin calls and payments, reporting whether calls and payments were made within a specified timeframe, such as beginning, middle, or end of day.

The Commission believes that the costs associated with the remaining aspects of the proposal to add several new daily reporting fields that would be incorporated into new appendix C are negligible. The Commission believes that DCOs already possess this information in read-ready format and use it in the ordinary course of business, and the proposal only requires that they transmit it to the Commission in a standardized format. Despite these beliefs and out of an abundance of caution, the Commission is estimating the cost of developing and producing the new daily reporting fields that would be incorporated into new appendix C.

The Commission estimates that the capital costs associated with the proposal are negligible. The Commission also estimates that any ongoing costs are negligible because the Commission understands that the preparation and submission of the daily reports required pursuant to § 39.19(c)(1)(i) is largely automated. However, to the extent that a DCO does not currently use any of the information that would be required under the proposed new fields, or if that information is not accessible on an automated basis, then a DCO may incur start-up costs associated with reporting information pursuant to the proposed new fields, specifically including costs for coding, as well as testing, quality assurance, and compliance review. To estimate these start-up costs, the Commission relied upon internal subject matter experts in its Divisions of Data and Clearing and Risk to estimate the amount of time and type of DCO personnel necessary to complete the coding, testing, quality assurance, and compliance review. The Commission then used data from the Department of Labor's Bureau of Labor Statistics from May 2021 to estimate the total costs of this work.[38] Using this method, the Commission estimates the total start-up costs to be approximately $109,574.43 per DCO.[39]

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposal to add these daily reporting fields to new appendix C to part 39 in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that, because of its potential to provide the information required to better understand DCO liquidity risk from clearing members, the proposal that DCOs include in their daily reports

[38] According to the May 2021 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/oes/current/oes_nat.htm,* the mean salary for a computer systems analyst in management companies and enterprises is $103,860. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and multiplied by 2.5 to account for retirement, health, and other benefits, as well as for office space, computer equipment support, and human resources support, all of which yields an hourly rate of $144.25. Similarly, a computer programmer has a mean annual salary of $102,430, yielding an hourly rate of $142.26; a software quality assurance analyst and tester has a mean annual salary of $99,460, yielding an hourly rate of $138.14; and a compliance attorney has a mean annual salary of $198,900, yielding an hourly rate of $276.25.

[39] The estimate of total start-up costs consists of the following: $14,101.10 for the delta ladder, gamma ladder, vega ladder, and the zero rate curves, based on 20 hours of systems analyst time, 40 hours of programmer time, and 40 hours of tester time; $7,248.61 for adding interest rate, forward rates, and end of day position fields, based on 8 hours of systems analyst time, 4 hours of programmer time, and 40 hours of tester time; $39,907.22 for the payment file, based on 120 hours of systems analyst time, 120 hours of programmer time, and 40 hours of tester time; $14,140.83 for the manifest file, based on 40 hours of systems analyst time, 40 hours of programmer time, and 20 hours of tester time; and $22,676.67 for adding the back testing fields, based on 40 hours of systems analyst time, 80 hours of programmer time, and 40 hours of tester time. The estimate of total start-up costs also includes $11,500.00 for compliance attorney review. A DCO may choose to employ a manifest file or alternatively a file count to the account and end of day position files. If a DCO elects the latter, the estimate of total start-up costs is reduced to $106,120.38, because while adding a manifest file is estimated to cost $14,140.83, adding file count information is estimated to cost $10,686.78 (based on 20 hours of systems analyst time, 16 hours of programmer time, and 40 hours of tester time). Additionally, the Commission estimates that requiring DCOs to report pricing information for contracts without open interest, which the Commission is considering, would impose start-up costs of $34,137.22 on each DCO, based on 80 hours of systems analyst time, 120 hours of programmer time, and 40 hours of tester time. The $34,137.22 estimate is not included in the estimated total start-up costs of $109,574.43 per DCO because, although the Commission is considering this requirement and is requesting comment, it has not otherwise proposed this requirement.

timing information about variation margin calls and payments is likely to improve protection of market participants and the public, enhance the financial integrity of the futures markets, and ultimately result in improved DCO risk management practices. The proposals to require DCOs to include in their daily reports delta ladder, gamma ladder, vega ladder, zero rate curve, and yield curve information for interest rates swaps, as well as trade dates for interest rate swaps, forward rate agreements, and inflation index swaps, are expected to provide information necessary for the Commission to improve its supervision and oversight of DCOs and the derivatives markets, which in turn is expected to result in improved protection of market participants and the public, improved financial integrity of the futures markets, and potentially improved DCO risk management practices. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by this proposal.

9. Daily Reporting of Margin Model Back Testing—§ 39.19(c)(1)(i)

a. Benefits

The Commission is proposing to add to § 39.19(c)(1)(i) a requirement that DCOs include in their daily reports the results of the margin model back testing that DCOs are required to perform daily pursuant to § 39.13(g)(7)(i). Margin model back testing results are a crucial element of an effective risk surveillance program; obtaining this information would allow the Commission to conduct more effective oversight of DCOs, thereby enhancing the protections afforded to the markets generally.

b. Costs

The Commission expects that the proposal to require DCOs to report back testing results daily will impose only a negligible cost on DCOs because DCOs already possess this information, and they are being required only to transmit it to the Commission in a standardized format. However, to the extent that a DCO does not maintain in the required standardized format the information that would be required under the proposal, a DCO may incur initial costs related to modifying its systems to convert the information to the standardized format, specifically including costs for coding, as well as testing, quality assurance, and compliance review. An estimate of these start-up costs is included in the discussion of the estimated costs associated with reporting information pursuant to the proposed new fields in proposed appendix C. The Commission notes, however, that some DCOs are already voluntarily providing back testing information to the Commission on a weekly or monthly basis.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposal to require DCOs to report back testing results daily in light of the specific considerations identified in Section 15(a) of the CEA. The proposal to require DCOs to report back testing results daily is expected to improve the Commission's supervision of DCO risk management and, therefore, is expected to yield enhanced protection of market participants and the public, improved financial integrity of the futures markets, and also potentially improve DCO risk management practices. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by this proposal.

10. Fully Collateralized Positions—§ 39.19(c)(1)(ii)

a. Benefits

The Commission is proposing to amend § 39.19(c)(1)(ii) to clarify that, as with § 39.19(c)(1)(i), this regulation does not apply to fully collateralized positions. Because § 39.19(c)(1)(ii) merely expands on § 39.19(c)(1)(i) and has no independent force or effect, this does not represent a substantive change but merely provides greater clarity and certainty.

Clarifying the applicability of § 39.19(c)(1)(ii) provides greater certainty to DCOs, their clearing members, and their customers, and should prevent them from having to request guidance on this matter from the Commission or the Division in the future. Further, the Commission believes that it may increase operational efficiency for DCOs that clear fully collateralized positions.

b. Costs

The Commission does not anticipate any non-negligible change in costs resulting from this proposal.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in Section 15(a) of the CEA. In consideration of Section 15(a)(2)(B) of the CEA, the Commission believes that the proposal to clarify § 39.19(c)(1)(ii) may increase operational efficiency for DCOs that clear fully collateralized positions. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments.

11. Reporting Change of Control of the DCO—§ 39.19(c)(4)(ix)(A)(1)

a. Benefits

Regulation 39.19(c)(4)(ix)(A)(1) requires a DCO to report any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in at least a 10 percent change of ownership of the DCO. The Commission is proposing to amend § 39.19(c)(4)(ix)(A)(1) to require a DCO to report any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in a change to the entity or person holding a controlling interest in the DCO, whether through an increase in direct ownership or voting interest in the DCO or in a direct or indirect corporate parent entity of the DCO. This proposal would ensure that the Commission has accurate knowledge of the individuals or entities that control a DCO and its activities regardless of the corporate structures of the equity holders of the DCO.

b. Costs

The Commission expects the costs related to the proposed amendments to § 39.19(c)(4)(ix)(A)(1) to be negligible. Specifically, the Commission expects a negligible cost burden with respect to the proposed changes, in part because the changes of control contemplated by the proposal occur infrequently. In addition, DCOs have typically notified the Commission of such changes of control even if not technically required by the current regulations. The administrative burden of notifying the Commission—preparing a notification, attaching relevant but pre-existing supporting documents such as the revised organizational chart, and submitting to the Commission—is negligible.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.19(c)(4)(ix)(A)(1) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments may have a moderately beneficial effect on protection of market participants and the public, as well as on the financial integrity of the futures markets, because the proposed amendments would provide the Commission with a better

understanding of the organizational structure of the DCO and its position in the broader markets. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.19(c)(4)(ix)(A)(1).

11. Reporting Issues With Credit Facility Funding Arrangements, Liquidity Funding Arrangements, Custodian Banks, and Settlement Banks—§ 39.19(c)(4)(xv)

a. Benefits

The Commission is proposing to amend § 39.19(c)(4)(xv), which currently requires reporting of issues or concerns with regard to settlement banks only, to require that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the DCO or approved for use by the DCO's clearing members. Requiring the reporting of this information will promote the Commission's awareness of material issues or concerns that may impact a DCO's operations and its compliance with its regulatory obligations.

b. Costs

The Commission expects that the costs related to the proposed amendments to § 39.19(c)(4)(xv) will be negligible. Specifically, because a DCO is only required to report these issues when it becomes aware of them, and given that these events are not very common, any cost increase is estimated to be negligible.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.19(c)(4)(xv) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments to § 39.19(c)(4)(xv) may potentially have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the futures markets, because the proposed amendments would provide the Commission with new, additional information that is anticipated to assist the Commission in its supervision of DCOs and oversight of the derivatives markets. Additionally, this information could be time-sensitive and critically important in times of market stress or broader economic upheaval. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.19(c)(4)(xv).

12. Reporting of Updated Responses to the Disclosure Framework for Financial Market Infrastructures—§ 39.19(c)(4)(xxv)

a. Benefits

The Commission is proposing new § 39.19(c)(4)(xxv) to codify in § 39.19 the requirement in § 39.37(b)(2) that, when a DCO updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions in accordance with § 39.37(b)(1), the DCO shall provide notice of those updates to the Commission. The proposed amendment further centralizes within § 39.19 the obligations of DCOs to report information to the Commission, which may be of some benefit to affected DCOs by consolidating their reporting obligations within one location.

b. Costs

The Commission does not anticipate any costs associated with the proposed adoption of § 39.19(c)(4)(xxv) because it does not alter the reporting obligations of DCOs.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed adoption of § 39.19(c)(4)(xxv) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission has considered the Section 15(a) factors and believes that they are not implicated by the proposed adoption of § 39.19(c)(4)(xxv).

13. Publication of Margin-Setting Methodology and Financial Resource Package Information—§ 39.21(c)(3) and (4)

a. Benefits

The Commission is proposing to amend § 39.21(c)(3) and (4) to provide that a DCO that clears only fully collateralized positions is not required to disclose its margin-setting methodology, or information regarding the size and composition of its financial resource package for use in a default, if instead the DCO discloses that it does not employ a margin-setting methodology or maintain a financial resource package because it clears only fully collateralized positions. The Commission anticipates the public may benefit from increased clarity regarding the risks that market participants may face at such a DCO because the full collateralization requirement is intended to mitigate such risk.

b. Costs

The Commission does not anticipate any costs associated with the proposed amendment to § 39.21(c)(3) and (4).

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.21(c)(3) and (4) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments to § 39.21(c)(3) and (4) would serve the broader public interest due to the increased clarity regarding the risks that market participants may face at such a DCO, as the full collateralization requirement is intended to mitigate such risk. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.21(c)(3) and (4).

14. Excluding Eligible DCOs From the Requirement in § 39.21(c)(7) To Publish a List of Clearing Members

a. Benefits

The Commission is proposing to amend § 39.21(c)(7) to provide that a DCO may omit any non-FCM clearing member that clears only fully collateralized positions, and therefore does not share in the mutualized risk associated with clearing activity, from its published list of clearing members. The Commission anticipates that the proposed amendment would reduce operational and compliance burdens on eligible DCOs. This is a significant benefit because, given the manner in which they engage directly with market participants, DCOs that provide for fully collateralized clearing may have a large number of non-FCM clearing participants and a high volume of turnover among such participants.

b. Costs

The Commission does not anticipate any costs associated with the proposed amendments to Regulation 39.21(c)(7), as the proposed rule reduces the public disclosure requirements that apply to DCOs that provide for fully collateralized clearing.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendments to § 39.21(c)(7) in light of

the specific considerations identified in Section 15(a) of the CEA. The Commission believes that the proposed amendments to § 39.21(c)(7) would have a limited and rather moderately beneficial effect on the efficiency and competitiveness of the futures markets, specifically with regard to the operations of the eligible DCOs themselves, because eligible DCOs would enjoy the reduced burden of being excused from including non-FCM clearing members that clear only fully collateralized positions in their published lists of clearing participants. Additionally, with respect to public interest considerations, the Commission believes that the proposed amendments to § 39.21(c)(7) would have a moderately beneficial effect on non-FCM market participants that clear through eligible DCOs, because those market participants would benefit from the additional privacy afforded to them when they are not publicly listed as clearing members on the DCO's website. The Commission has considered the other Section 15(a) factors and believes that they are not implicated by the proposed amendments to § 39.21(c)(7).

15. Clarifying the Disclosure Obligations in § 39.37

a. Benefits

The Commission is proposing to amend § 39.37(c) and (d) to clarify that public disclosure of the information described in those paragraphs is all that is required. The proposed changes to § 39.37(c) and (d) would provide a modest benefit to SIDCOs and subpart C DCOs by clarifying that a separate report directly to the Commission of information that the DCO discloses publicly pursuant to § 39.37(c) and (d) is not required.

b. Costs

The Commission has not identified any costs associated with the proposed changes to § 39.37(c) and (d).

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the proposed amendment of § 39.37(c) and (d) in light of the specific considerations identified in Section 15(a) of the CEA. The Commission has considered the Section 15(a) factors and believes that they are not implicated by the proposed changes.

16. Proposed Amendments to § 140.94(c)(10)

a. Benefits

The Commission is proposing to amend § 140.94(c)(10) to provide the Director of the Division with delegated authority to request additional information that the Commission determines to be necessary to conduct oversight of the DCO, and to specify the format and manner of the DCO reporting requirements. The Commission believes the proposed delegation of authority would promote a more expedient process to address these aspects of the reporting requirements under § 39.19.

b. Costs

The Commission has not identified any costs associated with the proposed amendments to § 140.94(c)(10).

c. Section 15(a) Factors

The Commission has considered the Section 15(a) factors and believes that they are not implicated by this proposed amendment.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[40]

The Commission believes that the public interest to be protected by the antitrust laws is the promotion of competition. The Commission requests comment on whether the proposed amendments implicate any other specific public interest to be protected by the antitrust laws. The Commission has considered the proposed rulemaking to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requests comment on whether the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has determined that the proposed rule amendments are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rule amendments.

List of Subjects in 17 CFR Part 39

Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

[40] 7 U.S.C. 19(b).

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 6(c), 7a–1, and 12a(5); 12 U.S.C. 5464; 15 U.S.C. 8325; Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, title VII, sec. 752, July 21, 2010, 124 Stat. 1749.

■ 2. Amend § 39.13 by revising paragraph (h)(5)(i)(B), removing paragraph (C), and adding paragraph (iii), to read as follows:

§ 39.13 Risk management.

* * * * *

(h) * * *

(5) * * *

(i) * * *

(B) Require its clearing members to provide to the derivatives clearing organization or the Commission, upon request, information and documents regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures.

(ii) * * *

(iii) A derivatives clearing organization that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) of this section those clearing members that clear only fully collateralized positions.

* * * * *

■ 3. Amend § 39.15 by revising paragraph (b)(2) to read as follows:

§ 39.15 Treatment of funds.

* * * * *

(b) * * *

(2) *Commingling.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of sections 4d(a) or 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to the requirements and standard of review of § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(i) Identification of the products that would be commingled, including product specifications or the criteria

that would be used to define eligible products;

(ii) Analysis of the risk characteristics of the eligible products, including any characteristics that are unusual in relation to the other products cleared by the derivatives clearing organization, and of the derivatives clearing organization's ability to manage those risks;

(iii) Analysis of the liquidity of the respective markets for the eligible products, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such eligible products in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

(iv) A description of any additional requirements that would apply to clearing members permitted to commingle eligible products;

(v) A description of any risk management changes that the derivatives clearing organization will implement to oversee its clearing members' risk management of eligible products, or an analysis of why existing risk management systems and procedures are adequate in connection with the proposed commingling;

(vi) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the eligible products that would be commingled, including a discussion of any default management procedures that are unique to the products eligible for commingling;

(vii) A discussion of the extent to which the derivatives clearing organization anticipates allowing portfolio margining of commingled positions, including a description and analysis of any margin reduction applied to correlated positions and the language of any applicable clearing rules or procedures, and an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4) of this chapter; and

(viii) Any other information necessary for the Commission to determine the rule submission's compliance with the Act and the Commission's regulations, which the Commission may request as supplemental information if not provided in the initial submission. The Commission may extend the review period for the rule submission in accordance with § 40.5(d) of this chapter in order to request and obtain supplemental information as necessary.

* * * * *

■ 4. Amend § 39.18 by adding to paragraph (a) in alphabetical order the definitions of ''Automated system'' and ''Hardware or software malfunction'', revising paragraphs (g)(1) and (2), and adding paragraph (g)(3) to read as follows:

§ 39.18 System safeguards.

(a) * * *

* * * * *

Automated system means computers, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources that a derivatives clearing organization uses in its operations.

* * * * *

Hardware or software malfunction means any circumstance where an automated system or a manually initiated process fails to function as designed or intended, or the output of the software produces an inaccurate result.

* * * * *

(g) * * *

(1) Any hardware or software malfunction or operator error that impairs, or creates a significant likelihood of impairment of, automated system operation, reliability, security, or capacity;

(2) Any security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of any automated system or any information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the derivatives clearing organization in discharging its responsibilities; or

(3) Any activation of the derivatives clearing organization's business continuity and disaster recovery plan.

* * * * *

■ 5. Amend § 39.19 by:

■ a. Revising paragraphs (c)(1)(i) and the introductory text of paragraph (c)(1)(ii),

■ b. Adding paragraph (c)(1)(iii),

■ c. Revising paragraphs (c)(4)(ix)(A)(*1*), (xii), (xiii), and (xv), and

■ d. Adding paragraph (c)(4)(xxv).

The revisions and additions read as follows:

§ 39.19 Reporting.

* * * * *

(c) * * *

(1) * * *

(i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10:00 a.m. on the next business day, a report containing the results of the back testing required under § 39.13(g)(7)(i), and the following information related to all positions other than fully collateralized positions:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account, using both a legal entity identifier, where available, and any internally-generated identifier, within each customer origin for each clearing member;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin; and

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data that the derivatives clearing organization generates, creates, or calculates in connection with managing the risks associated with such positions, for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account, using both a legal entity identifier, where available, and any internally-generated identifier, within each customer origin for each clearing member.

(ii) The report shall contain the information required by paragraphs (c)(1)(i)(A) through (D) of this section for each of the following, other than fully collateralized positions:

* * * * *

(iii) Notwithstanding the specific fields set forth in appendix C to this part, a derivatives clearing organization may choose to submit, after consultation with staff of the Division of Clearing and Risk, any additional data fields that is necessary or appropriate to better capture the information that is being reported.

* * * * *

(4) * * *

(ix) * * *

(A) * * *

(1) Result in at least a 10 percent change of ownership of the derivatives clearing organization or a change to the entity or person holding a controlling interest in the derivatives clearing organization, whether through an increase in direct ownership or voting interest in the derivatives clearing organization or in a direct or indirect

corporate parent entity of the derivatives clearing organization;

* * * * *

(xii) *Change in credit facility funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization enters into, terminates, or changes a credit facility funding arrangement, or is notified that such arrangement has changed, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Change in liquidity funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization enters into, terminates, or changes a liquidity funding arrangement, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the arrangement, change in expiration date, or any other material changes or conditions.

* * * * *

(xv) *Issues with credit facility funding arrangements, liquidity funding arrangements, custodian banks, or settlement banks.* A derivatives clearing organization shall report to the Commission no later than one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

* * * * *

(xxv) *Updates to Responses to the Disclosure Framework for Financial Market Infrastructures.* A systemically important derivatives clearing organization or a subpart C derivatives clearing organization that updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions pursuant to § 39.37(b)(1) must provide to the Commission, within ten business days after such update, a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses, as required by § 39.37(b)(2).

* * * * *

■ 6. Amend § 39.21 by revising paragraphs (c)(3), (4), and (7) to read as follows:

§ 39.21 Public information.

* * * * *

(c) * * *

(3) Information concerning its margin-setting methodology, except that a derivatives clearing organization that clears only fully collateralized positions instead may disclose that it does not employ a margin-setting methodology because it clears only fully collateralized positions;

(4) The size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A), except that a derivatives clearing organization that clears only fully collateralized positions instead may disclose that it does not maintain a financial resource package to be used in the event of a clearing member default because it clears only fully collateralized positions;

* * * * *

(7) A current list of all clearing members, except that a derivatives clearing organization may omit any clearing member that clears only fully collateralized positions and is not a futures commission merchant;

* * * * *

■ 7. Amend § 39.25 by revising paragraph (c) to read as follows:

§ 39.25 Conflicts of interest.

* * * * *

(c) Have procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

* * * * *

■ 8. Amend § 39.37 by revising paragraphs (c) and the introductory text of paragraph (d) to read as follows:

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(c) Publicly disclose relevant basic data on transaction volume and values consistent with the standards set forth in the Public Quantitative Disclosure Standards for Central Counterparties published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

(d) Publicly disclose rules, policies, and procedures concerning segregation and portability of customers' positions and funds, including whether each of:

* * * * *

■ 9. Add new Appendix C to part 39 to read as follows:

Appendix C to Part 39—Daily Reporting Data Fields

A. Daily Cash Flow Reporting

Field name	Description	House & customer origin	Individual customer account
Common Fields (Daily Cash Flow Reporting)			
Total Message Count	The total number of reports included in the file	M	M
FIXML Message Type	FIXML account summary report type	M	M
Sender ID	The CFTC-issued derivatives clearing organization (DCO) identifier	M	M
To ID	Indicate "CFTC"	M	M
Message Transmit Datetime.	The date and time the file is transmitted	M	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M	M
Report Date	The business date of the information being reported	M	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M	M
Report Time (Message Create Time).	The report "as of" or information cut-off time	M	M
DCO Identifier	CFTC-assigned identifier for a DCO	M	M
Clearing Participant Identifier.	DCO-assigned identifier for a particular clearing member	M	M
Clearing Participant Name	The name of the clearing member	M	M
Fund Segregation Type	Clearing fund segregation type	M	M
Clearing Participant LEI	Legal entity identifier (LEI) for a particular clearing member	C	C

Field name	Description	House & customer origin	Individual customer account
Clearing Participant LEI Name.	The LEI name associated with the clearing member LEI	C	C
Customer Position Identifier.	Proprietary identifier for a particular customer position account. If the position is non-disclosed, then indicate "NONDISCLOSED". If the position is not in balance at end-of-day through member underreporting positions, then indicate "BALANCE ACCOUNT". If the position is adjusted post end-of-day, then indicate "POSITIONDIFFERENCE".	C	N/A
Customer Position Name	The name associated with the customer position identifier	M	N/A
Customer Position Account Type.	Type of account used for reporting	C	N/A
Customer LEI	LEI for a particular customer; provide if available	N/A	C
Customer LEI Name	The LEI name associated with the customer position LEI	N/A	C
Margin Account	Margin account identifier	M	N/A
Customer Margin Name	The name associated with the customer margin identifier. If the position is non-disclosed, then indicate "NON-DISCLOSED MARGIN".	N/A	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field is used to identify associated positions.	M	M
Customer Margin Identifier.	Proprietary identifier for a particular customer. If the position is non-disclosed, then indicate "NON-DISCLOSED MARGIN". If the position is not in balance at end-of-day through member underreporting or overreporting positions, then indicate "EXCESS MARGIN". If the position is adjusted post end-of-day, then indicate "POSITIONDIFFERENCE".	N/A	M
Customer Margin Account Type.	Account type indicator	N/A	M
File number and count	Each FIXML file should indicate its sequence (*e.g.,* "file 1 of 10")	M	M
Futures and Options (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Concentration Risk	Risk factor component to capture costs associated with the liquidation of a large position	C	C
Delivery Margin	Margin collected to cover delivery risk	C	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Market Move Risk	Margin amount associated with market move risk	C	C
Margin Savings	The margin savings amount for the clearing member where there is a cross-margining agreement with another DCO.	C	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Net Option Value	The credit or debit amount based on the long or short options positions	C	C
Backdated Profit and Loss	The profit and loss (P&L) attributed to positions added that were novated on a prior date	O	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Customer Margin Omnibus Parent.	The margin identifier for the omnibus account associated with the customer margin identifier. (Conditional on reported customer position being part of a separately reported omnibus account position.).	N/A	C
Commodity Swaps (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.*, profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	C	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A

Field name	Description	House & customer origin	Individual customer account
Credit Default Swaps (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Concentration Risk	Risk factor component to capture costs associated with the liquidation of a large position	C	C
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	C
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Spread Response Risk	Risk factor component associated with credit spread level changes and credit term structure shape changes.	C	C
Systemic Risk	Risk factor component to capture parallel shift of credit spreads	C	C
Curve Risk	Risk factor that captures curve shifts based on portfolio	C	C
Index Spread Risk	Risk factor component associated with risks due to widening/tightening spreads of credit default swap (CDS) indices relative to each other.	C	C
Sector Risk	Risk factor component to capture sector risk	C	C
Jump to Default Risk	Risk factor component to capture most extreme up/down move of a reference entity	C	C
Basis Risk	Risk factor component to capture basis risk between index and index constituent reference entities	C	C
Interest Rate Risk	Risk factor component associated with parallel shift movements in interest rates	C	C
Jump to Health Risk	Risk factor component to capture extreme narrowing of credit spreads of a reference entity; also known as "idiosyncratic risk".	C	C
Other Risk	Any other risk factors included in the margin model	C	C
Recovery Rate Sensitivity Risk.	Risk factor component to capture fluctuations of recovery rate assumptions	C	C
Wrong Way Risk	Risk that occurs when exposure to a counterparty is adversely correlated with the credit quality of that counterparty. It arises when default risk and credit exposure increase together.	C	C
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Initial Coupon	Amount of coupon premium amount accrued from the start of the current coupon period through the trade date (Indicate gross pay/collect amounts.).	O	N/A
Upfront Payment	The difference in market value between the standard coupon and the market spread as well as the coupon accrued through the trade date. (Indicate gross pay/collect amounts).	O	N/A
Trade Cash Adjustment	Additional cash amount on trades. (Indicate gross pay/collect amounts)	C	N/A
Quarterly Coupon	Regular payment of quarterly coupon premium amounts (Indicate gross pay/collect amounts)	O	N/A
Credit Event Payments	Cash settlement of credit events. (Indicate gross pay/collect amounts)	C	N/A
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date. The sum of accrued coupon for each position in the clearing member's portfolio (by origin).	M	N/A
Final Mark to Market	Determined by marking the end-of-day position from par (100%) to the end-of-day settlement price	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Previous Accrued Coupon	Previous day's accrued coupon	M	N/A
Previous Mark to Market	Previous day's mark to market	M	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to CDS.	M	N/A
Foreign Exchange (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts).	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to FX.	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A

Field name	Description	House & customer origin	Individual customer account
Interest Rate Swaps (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons resulting from liquidity/concentration charges.	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Cross-Margined Products Profit/Loss.	P&L resulting from changes in value due to changes in the futures price. This P&L should only include changes to the cross-margined futures in the account.	C	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts).	C	N/A
Net Coupon Payment	Net amount of any coupon cash flows recognized on report date but actually occurring on currency's settlement convention date. (Indicate gross pay/collect amounts).	M	N/A
Net Present Value	Net present value (NPV) of all positions by currency.	M	N/A
Net Present Value Previous.	Previous day's NPV by currency	M	N/A
PV of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	M	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to IRS by currency.	M	N/A
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date. The sum of accrued coupon for each position in the clearing member's portfolio (by origin).	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Equity Cross Margin (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	This equity margin requirement will include the initial margin requirement without any additional margin required by the DCO.	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Net Option Value	The credit or debit amount based on the long or short options positions	C	C
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Consolidated (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	N/A
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The consolidated non-U.S. margin requirement for the origin. The consolidated non-U.S. margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss.	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A

Field name	Description	House & customer origin	Individual customer account
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Exempt DCO (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	This U.S. person margin requirement should include the initial margin requirement without any additional margin required by the DCO.	M	N/A
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date	M	N/A
Total Margin	The U.S. person margin requirement for the origin by currency contribution. If the traded currency's swaps (*i.e.*, JY) offset risk of other currencies, include an amount of zero for that currency. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Mark-to-Market	Determined by marking the end of day position(s) from par (100%) to the end of day settlement price	M	N/A

M = mandatory; C = conditional; O = optional.

B. *Daily Position Reporting*

Field name	Description	Use
Common Fields (Daily Position Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate "CFTC"	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time).	The report "as of" or information cut-off time	M
Message Event	The event source being reported	M
Market Segment ID	Market segment associated with the position report	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	C
Clearing Participant LEI Name.	The LEI name associated with the clearing member LEI	C
Customer Position Identifier	Proprietary identifier for a particular customer position account. If the position is non-disclosed, then indicate "NON-DISCLOSED". If the position is not in balance at end-of-day through member underreporting positions, then indicate "BALANCE ACCOUNT". If the position is adjusted post end-of-day, then indicate "POSITIONDIFFERENCE".	C
Customer Position Name	The name associated with the customer position identifier	M
Customer Position Account Type.	Type of account used for reporting	C
Customer Margin Omnibus Parent.	The margin identifier for the omnibus account associated with the customer margin identifier. (Conditional on reported customer position being part of a separately reported omnibus account position).	C
Customer Position LEI	LEI for a particular customer; must be provided when available	C
Customer Position LEI Name	The LEI name associated with the Customer Position LEI	C
Customer Margin Identifier	Proprietary identifier for a particular customer. If the position is non-disclosed, then indicate "NONDISCLOSED MARGIN". If the position is not in balance at end-of-day through member underreporting or overreporting positions, then indicate "EXCESS MARGIN". If the position is adjusted post end-of-day, then indicate "POSITIONDIFFERENCE".	C
Customer Margin Name	The name associated with the customer margin identifier. If the position is non-disclosed, then indicate "NON–DISCLOSED MARGIN".	C
File number and count	Each FIXML file should indicate its sequence (*e.g.,* "file 1 of 10")	M
Futures and Options (Daily Position Reporting)		
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Market Segment Identifier	Indicator that allows for validation of the futures and options fields	M
Cross-Margin Entity	Name of the entity associated with a cross-margined account	C
Exchange Commodity Code	Contract commodity code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	M
Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	M
Product Type	Indicates the type of product with which the security is associated	C
Security Type	Indicates type of security	M
Maturity Month Year	Month and year of the maturity (used for standardized futures and options)	M
Maturity Date	The date on which the principal amount becomes due. For non-deliverable forwards (NDFs), this represents the fixing date of the contract.	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Asset Subtype	Provides a more specific description of the asset type	C

Field name	Description	Use
Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Unit Leverage Factor	The multiplier needed to convert a change of one point of the quoted index into local currency P&L for a 1-unit long position.	C
Units	Unit of measure	M
Settlement Method	Method of settlement	C
Exchange Identifier (MIC)	Exchange where the instrument is traded	M
Security Description	Used to provide a textual description of a financial instrument	M
Unique Product Identifier	A single field that uniquely identifies a given product. All positions with this identifier will have the same price	M
Alternate Product Identifier—Spread Underlying Long.	When a contract represents a differential between two products, the product code that represents the long position in the spread for long position in the combined contract.	C
Alternate Product Identifier—Spread Underlying Short.	When a contract represents a differential between two products, the product code that represents the long position in the spread for short position in the combined contract.	C
Last Trading Date	The last day of trading in a futures contract. The format is YYYY–MM–DD, where YYYY is the year, MM is the month, and DD is the day of the month.	M
First Notice Date	The first date on which delivery notices are issued	C
Position (Long)	Long position size. If a position is quoted in a unit of measure (UOM) different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Change in Settlement Price	The quoted price change between the prior trading day's settlement and today's settlement	M
Unit Currency P&L	The local currency P&L between the prior trading day's settlement and today's settlement for a 1-unit long position	M
Outright Initial Margin	Initial margin for the position as if it were a stand-alone outright	C
Option Exercise Style	Exercise style	C
Option Strike Price	Option strike price	C
Option Put/Call Indicator	Option type	C
Underlying Settlement Price/Currency.	Settlement price, prior settlement price, settlement currency, and final settlement date	C
Underlying Exchange Commodity Code.	Common representation of the security	C
Underlying Clearing Commodity Code.	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	C
Underlying Product Type	Indicates the type of product with which the security is associated	C
Underlying Security Type	Indicates type of security. Underlying instrument is required for Security Type = OOF, OOC, or OPT. Use Security Type = MLEG for combo contracts.	C
Underlying Security Group (Sector).	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Underlying Maturity Month Year.	Maturity month and year (used for standardized futures and options)	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Asset Subtypes	Provides a more specific description of the asset type	C
Underlying Exchange Code (MIC).	Exchange where the underlying instrument is traded	C
Underlying Security Description.	Textual description of a financial instrument	C
Unique Underlying Product Code.	A single field that is the result of concatenating relevant fields that create a unique product ID that is associated with a unique price.	C
Primary Options Exchange Code—Implied Volatility Quote.	This field identifies the main options chain for the future that provides the implied volatility quote	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	C
Implied Volatility	The implied volatility and quotation style for the contract, typically in natural log percent or index points	C
	Commodity Swaps (Daily Position Reporting)	
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Market Segment Identifier	Indicator that allows for validation of the commodity swap fields	M
Exchange Commodity Code	Contract commodity code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	M
Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	M
Product Type	Indicates the type of product with which the security is associated	C
Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Universal Product Identifier	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Maturity Month Year	Month and year of the maturity (used for standardized futures and options)	M
Maturity Date	The date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Unit Leverage Factor	The multiplier needed to convert a change of one point of the quoted index into local currency P&L for a 1-unit long position.	C
Minimum Tick	Minimum price tick increment	C
Units	Unit of measure	M
Settlement Method	Swap settlement method	C
Exchange Identifier (MIC)	Exchange where the instrument is traded	M
Security Description	Used to provide a textual description of a financial instrument	C
Position (Long)	Long position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M

Field name	Description	Use
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.*, profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	C
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Universal Swap Identifier	Universal Swap Identifier (USI) namespace and USI. The USI namespace and the USI separated by a pipe "|" character should be entered.	M
Option Exercise Style	Exercise style	C
Option Put/Call Indicator	Option type	M
Option Strike Price	Option strike price	M
Underlying Settlement Price/Currency.	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Underlying Exchange Commodity Code.	Common representation of the security	C
Underlying Clearing Commodity Code.	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	M
Underlying Product Type	Indicates the type of product with which the security is associated	C
Underlying Security Group (Sector).	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Underlying Maturity Month Year.	Maturity month and year (used for standardized futures and options)	M
Underlying Maturity Date	The date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract	C
Underlying Asset Class	The broad asset category for assessing risk exposure	M
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Exchange Code (MIC).	Exchange where the instrument is traded	M
Underlying Security Description.	Textual description of a financial instrument	C
DELTA	(Options only) Delta is the measure of how the option's value varies with changes in the underlying price	C
Credit Default Swaps (Daily Position Reporting)		
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Market Segment Identifier	Indicator which allows for validation of the CDS fields	M
Exchange Security Identifier	Contract code issued by the exchange. (Underlying instrument is required for Security Type @SecTyp = SWAPTION).	O
Clearing Security Identifier (Red Code).	The code assigned to the CDS by Markit that identifies the referenced entity or the index, series and version. (Underlying instrument is required for Security Type = SWAPTION).	M
Universal Product Identifier	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Security Type	Indicator which identifies the derivative type	M
Restructuring Type	This field is used if the index has been restructured due to a credit event	M
Seniority Type	The class of debt	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Reference Entity Type (Sector).	Specifies the type of reference entity for first-to-default CDS basket contracts. The Markit sector code should be provided when available.	M
Coupon Rate	The coupon rate associated with this CDS transaction stated in Basis Points	M
Security Description (Reference Entity).	Name of CDS index or single-name or sovereign debt	M
Recovery Factor	The assumed recovery rate used to determine the CDS price	O
Position (Long)	Long position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
5 YR Equivalent Notional	The five-year equivalent notional amount for each risk factor/reference entity CDS contract	M
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date	M
Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market plus change in accrued coupon plus change in unsettled upfront fees. Does not include cash flows related to quarterly coupon payments, credit event payments, or price alignment interest.	M
Credit Exposure (CS01)	The credit exposure of the swap at a given point in time. CS01 = Spread DV01 = "dollar" value of a basis point = In currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related credit spread curves. CS01/Spread DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive CS01 = gain in value resulting from 1 basis point increase, negative CS01 = loss of value resulting from 1 basis point increase.	O
Mark to Market	Determined by marking the end of day position(s) from par (100%) to the end of day settlement price	M
Price Value of a Basis Point (PV01).	Change in P&L of a position given a one basis point move in CDS spread value. May also be referred to as DV01, Sprd DV01.	M
Previous Accrued Coupon	Previous day's accrued coupon	M
Previous Mark to Market	Previous day's mark to market	M
Universal Swap Identifier	Universal Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe "|" character.	O
Option Strike Price	Option strike price	C
Settlement Method	Method of settlement	C
Option Exercise Style	Exercise style	C
Option Put/Call	Option type	C
Option Type	Specifies the CDS option type	C
Option Start Date	The CDS option adjusted start date	C
Option Expiration Date—Adjusted.	The CDS option adjusted expiration date	C
Underlying Exchange Security Identifier.	The underlying contract alias used by outside vendors to uniquely identify the contract	O

Field name	Description	Use
Underlying Clearing Security Identifier (Red Code).	The underlying code assigned to the CDS by Markit that identifies the referenced entity or the index, series and version.	C
Underlying Universal Product Identifier.	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Underlying Security Type	Indicator which identifies the underlying derivative type	C
Underlying Restructuring Type.	This field is used if the underlying index has been restructured due to a credit event	C
Underlying Seniority Type	The underlying class of debt	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Reference Entity Type (Sector).	Specifies the type of underlying reference entity for first-to-default CDS basket contracts	C
Underlying Coupon Rate	The underlying coupon rate associated with this CDS transaction stated in basis points	C
Underlying Security Description (Reference Entity).	Name of underlying CDS index or single-name or sovereign debt	C
Underlying Recovery Factor	The assumed recovery rate used to determine the underlying CDS price	O
DELTA	Delta is the measure of how the swaption's value varies with changes in the underlying price	C
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	O
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	O
THETA	Theta is the rate at which an option loses value as time passes	O
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	O
Option Premium/Date	Amount of swaption	C
Foreign Exchange (Daily Position Reporting)		
Settle Date	Settle date of the position	M
Settlement Price/Fixing Currency.	Settlement price of the position. (Underlying settlement is required for FXOPT, FXNDO)	M
Discount Factor	Discount factor for the position. Use the factor for the MTM currency. (Required for FXFWD, FXNDF, FXNDO, FXOPT, FXSWAP).	M
Valuation Date	Valuation date of the position. (Required for FXFWD, FXNDF, FXNDO, FXOPT, FXSWAP)	M
Delivery Date	Delivery date of the position	M
Market Segment Identifier	Indicator that allows for validation of the FX fields	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Universal Product Identifier	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Security Type	Registered commodity clearing identifier. (Underlying instrument is required for Security Type = FXOPT | FXNDO)	M
Maturity Month Year	Month and year of the maturity. (Used for FXFWD/FXNDF)	C
Maturity Date (Expiration)	Specifies date of maturity (a calendar date). Used for FXFWD/FXNDF. For NDFs, this represents the fixing date of the contract.	C
Maturity Time (Expiration)	The contract expiration time. (Used for FXFWD/FXNDF)	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Valuation Method	Specifies the type of valuation method applied	C
Security Description	Used to provide a textual description of a financial instrument	C
Foreign Exchange Type	Identifies the type of FX contract. Use Typ = 7 for direct FX (*e.g.,* EUR/USD). Use Typ = 16 for NDFWD contracts (*e.g.,* THB/INR settled in USD).	M
Currency One	Specifies the first or only reference currency of the trade	M
Currency Two	Specifies the second reference currency of the trade	M
Quote Basis	For foreign exchange quanto option feature	M
Fixed Rate	(FXFWD or FXNDF only) Specifies the forward FX rate alternative	C
Spot Rate	Specifies the FX spot rates the first or only reference currency of the trade	C
Forward Points	(FXFWD or FXNDF only) The interest rate differential in basis points between the base and quote currencies in a forward rate quote. May be a negative value. (The number of basis points added to or subtracted from the current spot rate of a currency pair to determine the forward rate for delivery on a specific value date).	C
Delivery Type Indicator	Delivery type indicator	M
Position—Long	Gross long position. An affirmative zero value should be reported for the long position. (Both long and short positions are required.) For FXNDF use Typ = DLV for settlement currency.	M
Position—Short	Gross short position. An affirmative zero value should be reported for the short position. (Both long and short positions are required.) For FXNDF use Typ = DLV for settlement currency.	M
Final Mark to Market	Mark to market which includes the discount factor	M
Dollar Value of a Basis Point (DV01)—Long Currency.	The dollar value of a one basis point change (DV01) in the yield of the underlying security and that of the hedging vehicle.	M
Dollar Value of a Basis Point (DV01)—Short Currency.	The dollar value of a one basis point change (DV01) in the yield of the underlying security and that of the hedging vehicle.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.*, profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	M
Undiscounted Mark to Market	Mark to market, which does not include the discount factor	M
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to FX.	M
Universal Swap Identifier	Universal Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe " | " character.	M
Option Put/Call	Option type	C
Strike Rate	Option strike rate	C
Option Exercise Style	Exercise style	C
Option Cut Name	The code by which the expiry time is known in the market	C
Underlying Settlement Price/Fixing Currency.	Settlement price for the position. (Underlying settlement is required for FXOPT, FXNDO)	C
Underlying Exchange Security Code.	Security code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	C

Field name	Description	Use
Underlying Clearing Security Identifier.	Product underlying the FX option. For OTC options: Exch = NO MARKET	C
Underlying Universal Product Identifier.	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Underlying Security Type	Registered commodity clearing identifier. (Underlying instrument is required for @SecTyp = FXOPT | FXNDO)	C
Underlying Maturity Month Year.	Month and Year of the maturity. (Used for FXFWD/FXNDF)	C
Underlying Maturity Date (Expiration).	For FXFWD/FXNDF, the date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract.	C
Underlying Exchange Identifier (MIC).	Exchange where the instrument is traded	C
Underlying Security Description.	Textual description of a financial instrument	C
Option Long/Short Indicator	Indicates whether the option is short or long	C
Option Expiration	Adjusted option expiration date	C
Delivery Type Indicator	Delivery type indicator	M
Notional Long/Short	FX currency notional long or short	M
Implied Volatility	Implied volatility	C
DELTA	Delta is the measure of how the swaption's value varies with changes in the underlying price	C
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	O
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	O
THETA	Theta is the rate at which an option loses value as time passes	O
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	O
Option Premium MTM	Premium mark to market, which includes the discount factor	C
Interest Rate Swaps (Daily Position Reporting)		
Cleared Date	Date on which the trade was cleared at the DCO	M
Position Status	Position's status: If cleared and active, then indicate ''ACTIVE''; Clrd = 1, TrmtdInd = N. If cleared and inactive, then indicate ''TERMINATED''; Clrd = 1, TrmtdInd = Y. Terminated positions should only be reported on the day of termination.	M
Position Market Segment	Indicator which allows for validation of the IRS fields	M
DCO Pays Indicator	Indicate which cash flow the DCO pays	M
DCO Receives Indicator	Indicate which cash flow the DCO receives	M
Clearing Participant Pays Indicator.	Indicate which cash flow the clearing member pays	M
Clearing Participant Receives Indicator.	Indicate which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Universal Product Identifier	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Swap Class	The classification or type of swap	M
Swap Subclass	The sub-classification or notional schedule type of the swap	C
Security Description	Used to provide a textual description of a financial instrument	M
Leg Type	Identifies if the leg is fixed or floating	M
Leg Notional	Notional amount associated with leg	M
Leg Notional Currency	Currency of leg's notional amount	M
Leg Start Date Adj Bus Day Conv.	If start date falls on a weekend or holiday, value defines how to adjust actual start date	C
Leg Start Date	Leg's effective date	M
Leg Maturity Date Adj Bus Day Conv.	If the maturity date falls on a weekend or holiday, value defines how to adjust actual maturity date	C
Leg Maturity Date	The date on which the leg's principal amount becomes due	M
Leg Maturity Date Adj Calendar.	Regarding the maturity date, this specifies which dates are considered holidays	C
Leg Calc Per Adj Bus Day Conv.	If a date defining the calculation period falls on a holiday, this adjusts the actual dates based on the definition of the input.	C
Leg Calc Frequency	Calculation frequency, also known as the compounding frequency for compounded swaps	M
Leg First Reg Per Start Date	If there is a beginning stub, this indicates the date when the usual payment periods will begin	C
Leg Last Reg Per End Date	If there is an ending stub, this indicates the date when the usual payment periods will end	C
Leg Roll Conv	Indicates the day of the month when the payment is made	C
Leg Calc Per Adj Calendar	Regarding the calculation period, this specifies which dates are considered holidays	C
Leg Daycount	Defines how interest is accrued/calculated	C
Leg Comp Method	If payments are made on one timeframe but calculations are made on a shorter timeframe, this describes how to compound interest.	C
Leg Pay Adj Bus Day Conv	If cash flow pay or receive date falls on a weekend or holiday, value defines actual date payment is made	C
Leg Pay Frequency	Frequency at which payments are made	M
Leg Pay Relative To	Payment relative to the beginning or end of the period	C
Leg Payment Lag	Number of business days after payment due date on which the payment is actually made	C
Leg Pay Adj Calendar	Regarding dates on which cash flow payments/receipts are scheduled, this specifies which dates are considered holidays.	C
Leg Reset Relative To	Specifies whether reset dates are determined with respect to each adjusted calculation period start date or adjusted calculation period end date.	C
Leg Reset Date Adj Bus Day Conv.	Business day convention to apply to each reset date if the reset date falls on a holiday	C
Leg Reset Frequency	Frequency at which resets occur. If the Leg Reset Frequency is greater than the calculation per frequency, more than 1 reset date should be established for each calculation per frequency and some form of rate averaging is applicable.	C
Leg Fixing Relative To	Specifies the anchor date when the fixing date is relative to an anchor date	C
Leg Fixing Date Bus Day Conv.	Business day convention to apply to each fixing date if the fixing date falls on a holiday	C

Field name	Description	Use
Leg Fixing Date Offset	Specifies the fixing date relative to the reset date in terms of a business days offset	C
Leg Fixing Day Type	The type of days to use to find the fixing date (i.e., business days, calendar days, etc)	C
Leg Reset Date Adj Calendar	Regarding reset dates, this specifies which dates are considered holidays	C
Leg Fixing Date Calendar	Regarding the fixing date, this specifies which dates are considered holidays	C
Leg Fixed Rate or Amount	Only populate if Leg1 is Type "Fixed". This should be expressed in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Index	If Stream is floating rate, this gives the index applicable to the floating rate	C
Leg Index Tenor	For the floating rate leg, the tenor of the leg. For the fixed rate leg, NULL	C
Leg Spread	Describes if there is a spread (typically an add-on) applied to the coupon rate	C
Leg Pmt Sched Notional	Variable notional swap notional values	C
Leg Initial Stub Rate	The interest rate applicable to the Initial Stub Period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Initial Stub Rate Index 1	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Initial Stub Rate Index 2 Tenor.	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Leg Final Stub Rate	The interest rate applicable to the final stub period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Final Stub Rate Index 1	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Final Stub Rate Index 2 Tenor.	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Accrued Coupon (Interest)	Net accrued coupon amount since the last payment in the leg currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* "FIXED/FLOAT," "FLOAT1/FLOAT2").	M
Profit/Loss	Profit/loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. This should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons).	M
Leg Current Period Rate	If leg is a floating leg, this indicates the current rate used to calculate the next floating Leg coupon in decimal form (*e.g.,* 4% should be input as ".04").	M
Leg Coupon Payment	Coupon amount for T+1 in the leg currency. This should reflect the net cash flow that will actually occur on the following business day. Negative number indicates that a payment was made.	M
Dollar Value of Basis Point (DV01).	Change in value in native currency of the swap/swaption/floor/cap if relevant pricing curve is shifted up by 1 basis point. DV01 = "dollar" value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.*, Profit/Loss, price alignment interest, cash payments (fees, coupons, etc.).	M
Net Present Value	NPV of all positions by currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* "FIXED/FLOAT," "FLOAT1/FLOAT2").	M
Present Value of Other Payments.	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	M
Previous Net Present Value	Yesterday's NPV	C
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to IRS by currency.	M
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts).	C
Universal Swap Identifier	Universal Swap Identifier (USI) namespace and USI. Enter the USI Namespace and the USI separated by a pipe "|" character.	C
Leg Initial Exchange	Amount of any exchange of cash flow at initiation of trade being cleared	C
Leg Initial Exchange Date	Date that the initial exchange is set to occur	C
Leg Final Exchange	Amount of any exchange of cash flow at maturity of trade	C
Leg Final Exchange Date	Date that the final exchange is set to occur	C
Option Exercise Style	IRS swaption exercise style	C
Option Type	Specifies the IRS swaption type	C
Option Start Date	The IRS swaption adjusted start date	C
Option Adjusted Expiration Date.	The IRS swaption adjusted expiration date	C
Option Buy/Sell Indicator	Indicates the buyer or seller of a swap stream	C
Underlying Clearing Security Identifier.	Code assigned by the DCO for a particular contract	C
Underlying Universal Product Identifier.	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	C
Underlying Security Type	Registered commodity clearing identifier	C
Underlying Asset Class	The broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Swap Class	The classification or type of swap	C
Underlying Swap Subclass	The sub-classification or notional schedule type of the swap	C
Underlying Security Description.	Textual description of a financial instrument	C
Underlying Security Leg Type	Identifies if the leg is fixed or floating	C
Underlying Security Leg Notional.	Notional amount associated with leg	C
Underlying Security Leg Currency.	Currency of this leg's notional amount	C
Underlying Security Leg Index.	If stream is floating rate, this gives the index applicable to the floating rate	C
Underlying Security Leg Index Tenor.	For the floating rate leg, the tenor of the leg. For the fixed rate leg, NULL	C
Underlying Security Leg Fixed Rate Or Amount.	Only populate if Leg1 is type "Fixed". This should be in decimal form (*e.g.,* 4% should be input as ".04")	C
Underlying Security Leg Spread.	Indicates whether there is a spread (typically an add-on) applied to the coupon rate	C

Field name	Description	Use
DELTA	Delta is the measure of how the swaption's value varies with changes in the underlying price	C
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	C
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	C
THETA	Theta is the rate at which an option loses value as time passes	C
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	C
Option Premium	Amount of swaption premium	C
Option Premium Date	Date swaption premium is paid	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
Forward Rate Agreements (Daily Position Reporting)		
Previous Business Date	Previous business date	M
Market Segment Indicator	Indicator that allows for validation of the FRA fields	M
DCO Pays Indicator	Indicates which cash flow the DCO pays	M
DCO Receives Indicator	Indicates which cash flow the DCO receives	M
Clearing Participant Pays Indicator.	Indicates which cash flow the clearing member pays	M
Clearing Participant Receives Indicator.	Indicates which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Universal Product Identifier	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass.	C
FRA Type	Type of swap stream	M
Notional Amount	Stream notional amount	M
Notional Currency	Currency of this leg's notional amount	M
Start Date	Date the position was established	M
Maturity Date	The date on which the principal amount becomes due	M
Payment Day Count Conv	Defines how interest is accrued/calculated	M
Payment Accrual Days	Number of accrual days between the effective date and maturity date	M
First Payment Date	Date on which the payment is made. Always report the adjusted date	C
Reset Date Bus Day Conv	Business day convention to apply to each fixing date if the fixing date falls on a holiday	M
Reset Date Fixing Date	Date on which the payment is fixed. Always report the adjusted date	M
Fixed Rate	The fixed amount in decimal terms	M
Float Index	The index for the floating portion of the FRA	M
Float First Tenor	First tenor associated with the index	M
Float Second Tenor	Second tenor associated with the index	C
Float Spread	In basis point terms	M
Float Reference Rate	The fixed floating rate in decimal terms	M
Dollar Value of Basis Point (DV01).	Change in value in USD of the FRA if relevant pricing curve is perturbed up by 1 basis point. DV01 = "dollar" value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase.	M
Net Present Value	NPV of all positions by currency	M
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Previous Net Present Value	Yesterday's NPV	M
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to IRS by currency.	M
Universal Swap Identifier	Universal Swap Identifier (USI) namespace and USI. Enter the USI Namespace and the USI separated by a pipe "|" character.	C
Settlement Amount	The amount paid/received on the Payment Date. Always report adjusted date. (The position pays on a negative amount.).	M
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	C
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	C
Profit/Loss	Profit/Loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. Should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons).	C
Present Value of Other Payments.	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
Inflation Index Swaps (Daily Position Reporting)		
Cleared Date	Date on which the trade was cleared at the DCO	M
Position Status	Position's status: If cleared and active, then indicate "ACTIVE"; Clrd = 1, TrmtdInd = N. If cleared and inactive, then indicate "TERMINATED"; Clrd = 1, TrmtdInd = Y. Terminated positions should only be reported on the day of termination.	M
Market Segment Indicator	Indicator which allows for validation of the IIS fields	M
DCO Pays Indicator	Indicate which cash flow the DCO pays	M
DCO Receives Indicator	Indicate which cash flow the DCO receives	M
Clearing Participant Pays Indicator.	Indicate which cash flow the clearing member pays	M
Clearing Participant Receives Indicator.	Indicate which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Universal Product Identifier	Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier	O

Field name	Description	Use
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Swap Class	The classification or type of swap	M
Swap Subclass	The sub-classification or notional schedule type of the swap	C
Security Description	Used to provide a textual description of a financial instrument	M
Leg Type	Identifies if the leg is fixed or floating	M
Leg Notional	Notional amount associated with leg	M
Leg Notional Currency	Currency of this leg's notional amount	M
Leg Start Date Adj Bus Day Conv.	If start date falls on a weekend or holiday, value defines how to adjust actual start date	C
Leg Start Date	Leg's effective date	M
Leg Maturity Date Adj Bus Day Conv.	If the maturity date falls on a weekend or holiday, value defines how to adjust actual maturity date	C
Leg Maturity Date	The date on which the leg's principal amount becomes due	M
Leg Maturity Date Adj Calendar.	Regarding the maturity date, this specifies which dates are considered holidays	C
Leg Calc Per Adj Bus Day Conv.	If a date defining the calculation period falls on a holiday, this adjusts the actual dates based on the definition of the input.	C
Leg Calc Frequency	Calculation frequency, also known as the compounding frequency for compounded swaps	M
Leg Roll Conv	Describes the day of the month when the payment is made	C
Leg Calc Per Adj Calendar	Regarding the calculation period, this specifies which dates are considered holidays	C
Leg Stream Daycount	Defines how interest is accrued/calculated	C
Payment Stream Comp Method.	If payments are made on one timeframe but calculations are made on a shorter timeframe, this describes how to compound interest.	C
Payment Stream Business Day Conv.	If cash flow pay or receive date falls on a weekend or holiday, value defines actual date payment is made	C
Payment Stream Frequency	Frequency at which payments are made	M
Payment Stream Relative To	Specifies the anchor date when the payment date is relative to that date	C
Payment Stream First Date	The unadjusted first payment date	C
Payment Stream Last Regular Date.	The unadjusted last regular payment date	C
Payment Leg Calendar	Regarding dates on which cash flow payments/receipts are scheduled, this specifies which dates are considered holidays.	C
Leg Reset Date Bus Day Conv.	Business day convention to apply to each reset date if the reset date falls on a holiday	C
Leg Reset Date Relative To	Specifies the anchor date when reset date is relative to that date	C
Leg Reset Frequency	Frequency at which resets occur. If the Leg Reset Frequency is greater than the calculation per frequency, more than 1 reset date should be established for each calculation per frequency and some form of rate averaging is applicable.	C
Leg Reset Fixing Date Offset	Specifies the fixing date relative to the reset date in terms of a business days offset	C
Leg Fixing Day Type	The type of days to use to find the fixing date (*i.e.*, business days, calendar days, etc.)	C
Leg Reset Date Calendar	Regarding reset dates, this specifies which dates are considered holidays	C
Leg Fixing Date Bus Day Conv.	Business day convention to apply to each fixing date if the fixing date falls on a holiday	C
Leg Fixing Date Calendar	Regarding the fixing date, this specifies which dates are considered holidays	C
Fixed Leg Rate or Amount	Only populate if Leg1 is Type "Fixed". This should be expressed in decimal form (*e.g.,* 4% should be input as .04)	C
Floating Leg Inflation Index	If leg is floating rate, this gives the index applicable to the floating rate	C
Floating Leg Spread	Describes if there is a spread (typically an add-on) applied to the coupon rate	C
Floating Leg Payment Inflation Lag.	Number of business days after payment due date on which the payment is actually made	C
Floating Leg Payment Inflation Interpolation Method.	The method used when calculating the inflation index level from multiple points. The most common is the linear method.	C
Floating Leg Inflation Index Initial Level.	Initial known index level for the first calculation period	C
Floating Leg Inflation Index Fallback Bond Ind.	Indicates whether a fallback bond as defined in the 2006 ISDA Inflation Derivatives Definitions, sections 1.3 and 1.8, is applicable or not. If not specified, the default value is "Y" (True/Yes).	O
Leg Pmt Sched Notional	Variable notional swap notional values	C
Leg Stub Type	Stubs apply to initial or ending periods that are shorter than the usual interval between payments	C
Leg Initial Stub Fixed Rate	The interest rate applicable to the Initial Stub Period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Final Stub Fixed Rate	The interest rate applicable to the final stub period in decimal form (*e.g.,* 4% should be input as ".04")	C
Leg Initial Stub Floating Rate Index 1 Tenor.	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Initial Stub Floating Rate Index 2 Tenor.	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Leg Final Stub Floating Rate Index 1 Tenor.	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Final Stub Rate Floating Index 2 Tenor.	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.*, if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Leg First Reg Per Start Date	If there is a beginning stub, this describes the date when the usual payment periods will begin	C
Leg Last Reg Per End Date	If there is an ending stub, this describes the date when the usual payment periods will end	C
Leg Accrued Interest (Coupon).	The net accrued coupon amount since the last payment in the leg currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* "FIXED/FLOAT," "FLOAT1/FLOAT2").	M
Profit/Loss	Profit/Loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. This should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons).	M
Leg Coupon Amount	Coupon amount for T+1 in the leg currency. This should reflect the net cash flow that will actually occur on the following business day. A negative number indicates payment was made.	M
Leg Current Period Coupon Rate.	If leg is a floating leg, this indicates the current rate used to calculate the next floating leg coupon in decimal form (*e.g.,* 4% should be input as ".04").	M

Field name	Description	Use
Dollar Value of Basis Point (DV01).	Change in value in native currency of the swap/swaption/floor/cap if relevant pricing curve is shifted up by 1 basis point. DV01 = ''dollar'' value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.*, profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	M
Net Present Value	NPV of all positions by currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* ''FIXED/FLOAT,'' ''FLOAT1/FLOAT2'').	M
Present Value of Other Payments.	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	M
Previous Net Present Value	Yesterday's NPV	C
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid with respect to IRS by currency.	M
Universal Swap Identifier	Universal Swap Identifier (USI) namespace and USI. Enter the USI Namespace and the USI separated ''|'' character	C
Stream Initial Exchange	Amount of any exchange of cash flow at initiation of trade being cleared	C
Stream Initial Exchange Date	Date that the initial exchange is set to occur	C
Stream Final Exchange	Amount of any exchange of cash flow at maturity of trade	C
Stream Final Exchange Date	Date that the final exchange is set to occur	C
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
Equity Cross Margin (Daily Position Reporting)		
Market Segment Identifier	Indicator which allows for validation of the equity cross margin fields	M
Exchange Security Identifier	Contract code issued by the exchange	M
Clearing Security Identifier	Registered clearing security identifier. The code is for the contract as if it was traded in the form in which it is cleared. For example, if the contract were traded as a spread but cleared as an outright, the outright symbol should be used.	M
Product Type	Indicates the type of product the security is associated with	C
Security Type	Indicates type of security	M
Maturity Month Year	Month and year of the maturity (used for standardized futures and options)	M
Maturity Date	The date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract	C
Asset Class	The broad asset category for assessing risk exposure.	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Security Description	Used to provide a textual description of a financial instrument	M
Position (Long)	Long position size. If a position is quoted in a unit of measure (UOM) different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Option Strike Price	Option strike price	C
Option Put/Call Indicator	Option type	C
Underlying Exchange Commodity Code.	Underlying Contract code issued by the exchange	C
Underlying Clearing Commodity Code.	Registered commodity clearing identifier. The code is for the contract as if it were traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	C
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Type	Indicates type of security. Underlying instrument is required for Security Type = OOF, OOC, or OPT. Use Security Type = MLEG for combo contracts.	C
Underlying Maturity Month Year.	Maturity month and year (used for standardized futures and options)	C
Underlying Maturity Date	The date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract	C
Underlying Asset Class	The broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Settlement Price/Currency.	Settlement price, prior settlement price, settlement currency, and final settlement date	C

M = mandatory; C = conditional; O = optional.

C Greek Ladder Reporting

Field name	Description	Use
Common Fields (Greek Ladder Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M

Field name	Description	Use
Report Time (Message Create Time).	The report "as of" or information cut-off time	M
Message Event	The event source being reported	M
File number and count	Each FIXML file should indicate its sequence (*e.g.*, "file 1 of 10")	M
Ladder Indicator	Indicator that identifies the type of Greek ladder	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name.	The LEI name associated with the clearing member LEI	M
Customer Identifier	Proprietary identifier for a particular customer position account	C
Customer Name	The name associated with the customer position identifier	C
Customer Account Type	Type of account used for reporting	C
Customer LEI	LEI for a particular customer; provide if available	C
Customer LEI Name	The LEI name associated with the customer position LEI	C
Delta Ladder (Daily Reporting)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M
Gamma Ladder (Daily Reporting)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve.	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M
Vega Ladder (Daily Reporting)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M

M = mandatory; C = conditional; O = optional.

D. Curve Reference Reporting

Field name	Description	Use
Common Fields (Curve Reference Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate "CFTC"	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time).	The report "as of" or information cut-off time	M
Message Event	The event source being reported	M
File number and count	Each FIXML file should indicate its sequence (*e.g.*, "file 1 of 10")	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Currency Curve (Daily Reporting)		
Curve	Reference curve name	M
Currency	ISO 4217 currency code	M
Maturity Date	The date on which the principal amount becomes due	M
Par Rate	Rate such that the maturity will pay in order to sell at par today	M
Zero Rate Curve (Daily Reporting)		
Currency	ISO 4217 currency code	M
Curve	Reference curve name	M
Maturity Date	The date on which the principal amount becomes due	M
Offset	The difference in days between the maturity date and reporting date	M
Accrual Factor	The difference in years between the maturity date and reporting date	M
Discount Factor	Value used to compute the present value of future cash flows values	M
Zero Rate	Averages of the one-period forward rates up to their maturity	M

M = mandatory; C = conditional; O = optional.

E. Back Testing Reporting

Field name	Description	Use
Common Fields (Back Testing Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time).	The report ''as of'' or information cut-off time	M
Message Event	The event source being reported	M
Breach Indicator	Indicates the breach file	M
File number and count	Each FIXML file should indicate its sequence (e.g., ''file 1 of 10'')	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name.	The LEI name associated with the clearing member LEI	M
Customer Identifier	Proprietary identifier for a particular customer position account	C
Customer Name	The name associated with the customer position identifier	C
Customer Account Type	Type of account used for reporting	C
Customer LEI	LEI for a particular customer; provide if available	C
Customer LEI Name	The LEI name associated with the customer position LEI	C
Breach Details (Daily Reporting)		
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin	M
Breach Amount	Difference between the initial margin and variation margin	M
Breach Summary (Daily Reporting)		
Total Instance	Total number of testing dates for the account	M
Number of Breaches	Total number of breaches in the testing period	M
Test Range Start	Beginning date of the test	M
Test Range End	End date of the test	M

M = mandatory; C = conditional; O = optional.

F. Cash Flow Reporting

Field name	Description	Use
Variation Margin Reporting		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Business Date	The applicable trade date to which the payment activity relates	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time).	The report ''as of'' or information cut-off time	M
Message Event	The event source being reported	M
File number and count	Each FIXML file should indicate its sequence (*e.g.*, ''file 1 of 10'')	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name.	The LEI name associated with the clearing member LEI	M
Call Transaction ID	A unique ID that links the amount called to the amount received	M
Settlement Cycle	An acronym that indicates to which settlement cycle the variation margin payment applies. *E.g.*, BOD = Beginning of Day, ITD = Intraday, EOD = End of Day.	M
Call Time	The timestamp indicating when the DCO declares or issues notice that a variation margin payment is due to be received from its clearing members.	M
Call Amount	The amount of variation margin the DCO expects to be paid	M
Received Time	The timestamp indicating when the DCO received variation margin due from a clearing member	M
Received Amount	The amount of variation margin received from a clearing member	M
Paid Time	The timestamp indicating when the DCO declares or issues notice that a variation margin payment is due to be paid to its clearing members.	M

Field name	Description	Use
Paid Amount	The amount of variation paid to a clearing member	M

M = mandatory; C = conditional; O = optional.

G. Manifest Reporting

Field name	Description	Use
Manifest Reporting		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate "CFTC"	M
Message Transmit Datetime	The date and time the file is transmitted	M
Filenames	List of files to be sent	M

M = mandatory; C = conditional; O = optional.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 10. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 11. Amend § 140.94 by revising paragraph (c)(10) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) * * *

(10) All functions reserved to the Commission in § 39.19(a), (b)(1), (c)(2), (c)(3)(iv), and (c)(5) of this chapter;

* * * * *

Issued in Washington, DC, on December 6, 2022, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Reporting and Information Requirements for Derivatives Clearing Organizations—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

Today the Commission will consider a proposal to amend certain reporting and information requirements applicable to derivatives clearing organizations ("DCOs") which are set forth in Part 39 of the Commission's regulations. The Commission last amended these requirements in January 2020[1] and is revisiting them today in order to address certain issues identified by the industry and through the Commission's experience with DCO compliance with the amended reporting and information requirements. The proposed amendments either codify existing staff no-action letters[2] and Commission practices[3] or provide further changes to or clarification of certain Part 39 regulations in order to ensure that DCOs understand their reporting obligations and the Commission receives the information it needs to perform its supervisory responsibilities. Specifically, the proposed amendments would, among other things, update information requirements associated with commingling customer funds and positions in futures and swaps in the same account, address certain systems-related reporting obligations in Regulation 39.18(g) regarding exceptional events, revise certain daily and event-specific reporting requirements in Regulation 39.19(c), and codify, in an appendix, the reporting fields that a DCO is required to provide on a daily basis under existing Regulation 39.19(c)(1). In addition, the Commission is proposing to amend the delegation provision in Regulation 140.94(c) to provide the Director of the Division of Clearing and Risk with delegated authority to request the information required by Regulation 39.19, any additional information that the Commission determines to be necessary to conduct oversight of the DCO, and to specify the format and manner in which the information required by the regulation is submitted to the Commission.

I fully support the proposed rulemaking as it provides greater transparency, clarity and certainty to our DCOs and market participants regarding our reporting requirements and streamlines how the Commission receives the information necessary to supervise our DCOs. I believe it is prudent for the Commission to update or revise its regulations based on its experience and in response to certain industry and DCO concerns regarding compliance. Periodic stock takes and updates of our regulations based on our experiences and ongoing compliance concerns mitigate unintended consequences and ensure that our regulations are operating as intended. In addition, I would like to encourage continued dialogue between the Commission and market participants regarding elements of our regulations that may be impractical or simply do not work. As I understand it, the proposed amendment removing the requirement that a DCO report daily variation margin and cash flow information by individual customer account was borne out of discussions with the industry and certain DCOs. Such engagement assists us in refining our regulations. I also support changes to the delegation provision as it streamlines how the Commission's Division of Clearing and Risk receives information the Commission needs to conduct oversight of DCOs in a timely manner.

I look forward to the public's submission of comments and feedback on this notice of proposed rulemaking. Many thanks to the staff of the Division of Clearing and Risk for all of their hard work and effort in bringing this proposal to fruition.

Appendix 3—Supporting Statement of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (CFTC) issuance of the Notice of Proposed Amendments to Reporting and Information Requirements for Derivatives Clearing Organizations (Notice). Across the diverse commodity and derivates markets subject to CFTC oversight and in nascent markets where the CFTC's visibility and enforcement authority may be limited, recent events demonstrate the need to adopt, implement, enforce, and continuously refine CFTC rules and regulations to foster fair,

[1] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020).

[2] *See* CFTC Letter No. 21–31 (Dec. 22, 2021) (addressing compliance with the amended requirements in Regulation 39.19(c)(1) pertaining to the daily reporting of variation margin and cash flows by individual customer account). Letter No. 21–31 extended the no-action relief originally granted in CFTC Letter No. 21–01 (Dec. 31, 2020). *See* CFTC Letter No. 19–15 (July 1, 2019) (no-action letter to Eris Clearing, LLC, regarding several Commission regulations, including Regulation 39.21(c)(7), due to Eris Clearing, LLC's fully collateralized clearing model).

[3] Commodity Futures Trading Commission Guidebook for Part 39 Daily Reports, Version 1.0.1, Dec. 10, 2021.

orderly, and transparent markets, to ensure effective protection of customer assets and preserve market integrity. These efforts are critical to fulfilling our mandate.

The proposed amendments advance greater transparency, facilitate better supervision, and ensure that rules are fit for purpose. I thank the staff of the Division of Clearing and Risk (Division) for efforts taken to update the derivatives clearing organization (DCO) information and reporting requirements.

Even as we prepare to enhance information and reporting requirements, we cannot rest on our laurels. As noted, recent events underscore the significant value of these requirements imposed on DCOs. We must thoroughly interrogate attempts by actors seeking to enter our markets under the guise of complying with our regulations only to reveal intentions to engage in various forms of regulatory arbitrage or worse, defrauding customers and destabilizing our markets.

Refining Risk Management Information and Reporting Requirements

Adopted in the wake of the global financial crisis that began in 2007, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), implemented reforms to mitigate systemic financial risk and promote financial stability and transparency.[1] The market structure, governance, and oversight reforms introduced by the Dodd-Frank Act supported centralized clearing of bilateral over the counter swaps transactions in an effort to ''foster greater efficiencies'' across derivatives markets.[2] Building on existing regulatory principles previously implemented under the Commodity Exchange Act, the Dodd-Frank Act significantly strengthened the CFTC's authority to adopt, implement, and enforce regulations governing DCOs.

Payment, clearing, and settlement systems serve a central role in financial market infrastructure. DCOs clear and settle trillions of dollars in transactions each year in global financial markets. Each DCO interposes itself into each contract presented for clearing and settlement, meaning that the DCO serves as the economic counterparty to each party in a transaction for each contract that it clears and settles. This novation mutualizes risk, enables greater visibility into the risk exposure of market participants and DCOs, introduces uniform contractual obligations, and establishes standards for initial and variation margin.

The Commission, clearing members, and clearing service providers engage in a regulatory dialogue to ensure DCOs and clearing members maintain minimum liquidity reserves, introduce critical system safeguards including cyber-risk management measures, and implement governance measures that mitigate conflicts of interest, among other concerns. In the years following passage of the Dodd-Frank Act the CFTC issued a number of rules to implement core regulatory principles, including rules relating to treatment of funds (Core Principle F), system safeguards (Core Principle I), reporting (Core Principle J), and the public availability of information (Core Principle L).[3]

In January 2020, the Commission amended many of the provisions in part 39 in order to enhance certain risk management and reporting obligations, clarify the meaning of certain provisions, and streamline registration and reporting.[4] The proposed rulemaking updates these rules to reflect developments in risk management and in the Commission's understanding of what information is most helpful in carrying out its oversight mission.

I commend staff for beginning to review current regulations and their interplay with potential disintermediated clearing and settlement frameworks. While this proposal is a laudable first step, there is much more work to be accomplished.

Reflecting on the risk management oversight role and purpose of DCOs, it is critical, that we correctly calibrate information and reporting requirements. This responsibility is heightened in the context of our consideration of proposals that allow DCOs to offer direct clearing to retail customers. Direct clearing models may remove intermediaries who are subject to capital, risk management, and recovery and resilience requirements. Expansion of clearing to new asset classes, such as digital assets, also raises potential new stresses on traditional and alternative clearing models. It is important that the Commission properly tailor information and reporting in a manner that will enhance CFTC market surveillance, supervision and oversight. For a few issues raised in the Notice, the Commission may benefit from forward-looking comments that consider alterative market structures.

Segregation of Customer Funds Information and Reporting Requirements

Commission regulation 39.15 implements DCO Core Principle F and requires DCOs to establish standards and procedures for protecting and ensuring the safety of clearing member and customer funds. Core Principle F, as amended by the Dodd-Frank Act, requires a DCO to establish standards and procedures that are designed to protect and ensure the safety of funds and assets held in custody, to hold such funds and assets in a way designed to minimize risk, and to limit investment of such funds and assets to instruments with minimal credit, market, and liquidity risks.[5]

Segregation and safekeeping of clearing member and customer funds and assets is critical to ensuring that a DCO in fact serves the risk mitigating function for which it is intended; if these funds and assets are not optimally protected it can compromise the stability of the DCO and result in substantial losses to clearing members and ultimately customers, with accompanying destabilization of the markets. The proposed amendments to Regulation 39.15 aim to better tailor the information that DCOs distribute to the CFTC in response to requests for combining swaps and futures positions and the assets that support their trading in a single account. I support these proposed amendments because they are carefully designed to facilitate activity that will improve DCO risk management practices.[6]

Liquidity Reserves Reporting and Information Requirements

Most timely in light of recent events, the Notice proposes a package of liquidity-related transparency amendments revising the rules implementing Core Principle J.[7] Prudent risk management, and particularly the management of liquidity needs, is critical to DCO resilience. Macroeconomic conditions today are marked by persistent inflation and periods of sustained volatility. Prevailing market conditions are characterized by extreme volatility and positively correlated assets that amplify the risk of contagion, creating a perfect storm for unanticipated liquidity demands. Collectively, the proposed transparency amendments, which trigger reporting of changes to credit and liquidity facilities, and the financial health of the entities that offer them, should significantly improve the Commission's risk surveillance of DCOs and clearing members. I fully support these transparency provisions. They add value to the core principles we uphold—the protection of customers and the integrity of the financial markets that we regulate.

Cyber-Risk and Systems Safeguard Reporting and Information Requirements

The proposed rulemaking also amends the regulations implementing Core Principle I to increase the reporting of DCO automated system impairments, including impairments concerning third-party provided services.[8] We live in a digital age that is dependent on technology and the systems and software that comprise it. The Notice proposes amendments to regulation § 39.18(g)(1) to require that a DCO promptly notify the Division of any hardware or software malfunction or operator error that impairs, or creates a significant likelihood of impairment of, automated system operation, reliability, security, or capacity. The Notice also proposes to adopt new regulation § 39.18(g)(2) that requires a DCO to promptly notify the Division of any security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of an automated system or any information, services, or data relied upon by them in discharging their responsibilities. This information is essential to the Commission's ability to monitor registrants for operational safety and soundness and to

[1] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[2] Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps Under Regulation MC, 75 FR 65885 (Oct. 26, 2010).

[3] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011).

[4] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020), available at *https://www.federalregister.gov/documents/2020/01/27/2020-01065/derivatives-clearing-organization-general-provisions-and-core-principles.*

[5] *Id.* at 69,390.

[6] *See* Proposed Rulemaking at 5–12.

[7] *See* proposed Regulation 39.19.

[8] *See* proposed Regulation 39.18.

consider the implications of events that threaten the integrity of systemically important DCOs (SIDCOs).

While I appreciate that new reporting obligations will require adjustments, these important reforms represent a refined, more carefully tailored reporting regime that seeks to achieve the goals outlined in the Dodd-Frank Act. I, therefore, support the Commission's issuance of the Notice of Proposed Rulemaking on DCO Reporting Requirements. I also very much welcome stakeholder comments as to whether the proposed amendments are sufficient to accomplish the stated purpose, or whether additional information would further assist the CFTC in carrying out its mission.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

I support the Commission considering expanding requirements for clearing house notifications to the CFTC of cybersecurity incidents and clearing system malfunctions. The proposal is informed by the CFTC's experience, which involves around 120 recent reportable events, in addition to some clearing houses who have not reported cybersecurity incidents and clearing system malfunctions as required. I look forward to public comment on whether the proposed rule will be sufficient to hold clearing houses accountable for reporting delays or failures. I also look forward to public comment on whether the proposed rule sufficiently adapts to the ever-evolving cybersecurity threat landscape and adequately addresses changing technologies and risks, including those related to cryptocurrencies.

I thank the staff for their hard work on the proposal.

Cyber Attacks Are One of the Most Persistent and Severe Threats Facing Companies

Cyber attacks are one of the most persistent and severe threats facing companies today. In 2012, then-Director of the Federal Bureau of Investigation (''FBI''), Robert Mueller, warned, ''There are only two types of companies: those that have been hacked and those that will be. And even they are converging into one category: companies that have been hacked and will be hacked again.[1]

Since then, cyber attacks have evolved dramatically. In March 2022, FBI Director Christopher Wray said that last year, 14 of 16 critical infrastructure sectors saw ransomware incidents.[2] High profile cyber attacks such as at the Colonial Pipeline and JBS, the world's largest meat supplier, significantly affected supply chains.[3]

''The rapid digitization of financial services, which accelerated with the pandemic, has led to an increase in global cyber threats,'' according to the Financial Services Information Sharing and Analysis Center.[4] A 2022 survey of chief information security officers at 130 global financial institutions found that 74% experienced at least one ransomware attack over the past year and 63% experienced an increase in destructive attacks designed to counter incident responses.[5]

Adapting and Evolving To Meet the Changing Threat

The threat of cyber attacks is so severe that it requires the CFTC and our registrants to adapt and evolve to meet the changing threat. A major cyber incident involving U.S. clearing houses carries the potential to create disruptions—if not short-term chaos—throughout our financial markets. Imagine the equivalent of the Colonial Pipeline attack on a clearing house or major clearing member.

Additionally, given the nature of the technology and pseudo-anonymity, cryptocurrencies present significant and novel vulnerabilities to cyber attacks, with more than $2 billion stolen this year alone.[6] The chief executive officer of Binance, which suffered a $570 million hack last month, acknowledged on CNBC that the industry has to make their code more secure, adding ''in the blockchain world, whenever there is a bug, it can result in large losses.'' [7]

An immediate two-way flow of information will help the CFTC contain the threat and safeguard markets. The response to the Colonial Pipeline incident is instructive. The five-day shut down of Colonial after a ransomware attack could have been much longer but for Colonial calling the FBI, which had an open investigation into DarkSide. The FBI had the expertise to coordinate with the Cybersecurity & Infrastructure Security Agency, give Colonial technical information and remediation techniques, identify the intrusion vector, and ultimately, seize the virtual currency wallet of the criminals involved.[8] The CFTC, too, can be helpful in navigating the aftermath of cyber incidents or systems malfunctions alongside our clearing houses.

The proposed CFTC notification requirements would account for a clearing house's lack of initial detailed knowledge, while requiring critical information. The CFTC could combine that information with threat information learned through federal partnerships to assess the impact of the threat, including at the clearing house and whether it extends to others.[9] A clearing house would have to provide, in addition to notifications of cybersecurity incidents, Commission notifications of clearing system malfunctions. These notifications can help the Commission determine the clearing house's ability to perform its critical market infrastructure role.

We endeavor to work with clearing houses to address cyber events and issues *as they happen*—not to receive after-the-fact notice, when most of the damage has been done and when a useful, coordinated response may be too late. Also, it is possible that multiple firms within an industry are subject to the same vulnerabilities given increased reliance on third party providers and suppliers.

This is an important practical consideration. Clearing houses must take immediate protective steps when faced with cyber incidents. But they very often detect an intrusion or other anomaly long before they are prepared to identify a specific cause or avenue for the attack, the severity of the event, or the scope of information impacted.

I support removing the ''materiality'' requirement that an incident rises to a reporting threshold for severity or scope. This requirement can be associated with failures to notify the Commission or delays.

Holding Clearing Houses Accountable and Strengthening the Ability To Enforce Notification Requirements

The threat of cyber attacks has evolved to be so severe, as is the damage that can flow from a clearing system malfunction, that it is critical for the Commission to hold clearing houses accountable to the new notification requirements, if and when they are enacted. This can include through supervisory methods and enforcement actions for reporting failures and delays.

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[1] Robert S. Mueller, III, Director, Federal Bureau of Investigation, *Remarks as Prepared for Delivery to the RSA Cyber Security Conference,* San Francisco, CA (Mar. 1, 2012) available at *https://archives.fbi.gov/archives/news/speeches/combating-threats-in-the-cyber-world-outsmarting-terrorists-hackers-and-spies.*

[2] Christopher Wray, Director, Federal Bureau of Investigation, *FBI Partnering with the Private Sector to Counter the Cyber Threat—FBI,* Detroit, MI (Mar. 22, 2022) available at *https://www.fbi.gov/news/speeches/fbi-partnering-with-private-sector-to-counter-the-cyber-threat-032222.*

[3] Colonial was responsible for transporting almost half of the fuel to the eastern United States. After being hit by a ransomware attack from a group called DarkSide, Colonial shut down their pipeline. Panicked ensued, leading to a run on gas stations. The Colonial attack followed numerous other cyber incidents that year, including incidents at JBS, the New York City transportation system, and health care facilities. *See, e.g., Cyber Threats in the Pipeline: Using Lessons from the Colonial Ransomware Attack to Defend Critical Infrastructure,* Hearing before the Committee on Homeland Security, House of Representatives, 107th Congress, First Session (June 9, 2021) available at *https://www.govinfo.gov/content/pkg/CHRG-117hhrg45085/html/CHRG-117hhrg45085.htm.*

[4] Financial Services Information Sharing and Analysis Center, *Navigating Cyber 2022: Annual Cyber Threat Review and Predictions* (Q1, 2022) available at *https://www.fsisac.com/navigatingcyber2022-report.*

[5] VMware, *Modern Bank Heists 5.0: The Escalation: From Heist to Hijack, From Dwell to Destruction* (April 26, 2022) available at *https://www.vmware.com/learn/security/1414485_REG.html.*

[6] As Chairwoman Stabenow stated, ''$1.9 billion of cryptocurrency was stolen in hacks in the first seven months of this year alone.'' Opening Statement of Sen. Stabenow, *Hearing to Review the Digital Commodities Consumer Protection Act,* Before the U.S. Senate Committee on Agriculture, Nutrition, & Forestry (Sept. 15, 2022) available at *https://www.agriculture.senate.gov/newsroom/dem/press/release/chairwoman-stabenow-opening-statement-at-hearing-to-review-the-digital-commodities-consumer-protection-act.*

[7] *CNBC, $570 million worth of Binance's BNB token stolen in another major crypto hack (cnbc.com) (*Oct. 7, 2022) available at *https://www.cnbc.com/2022/10/07/more-than-100-million-worth-of-binances-bnb-token-stolen-in-another-major-crypto-hack.html.*

[8] Christopher Wray, Director, Federal Bureau of Investigation, *FBI Partnering with the Private Sector to Counter the Cyber Threat — FBI,* Detroit, MI (Mar. 22, 2022) available at *https://www.fbi.gov/news/speeches/fbi-partnering-with-private-sector-to-counter-the-cyber-threat-032222.*

[9] Reporting also would provide data on cyber incidents that the CFTC can use to assess risks and trends.

Accountability is critical for all clearing houses, but it is particularly important for new clearing houses (now and in the future), including cryptocurrency firms not used to being regulated by a U.S. regulator. While established clearing houses may be familiar with working with the CFTC to address cyber events and system malfunctions as they happen, new entrants to this space may be less familiar with the requirements and process. Holding all clearing houses accountable to these new requirements, if and when enacted, will be critical to containing the impact of any threat.

In my experience as a long-standing law enforcement official, clear rules provide the strongest accountability, and strengthen the ability to bring a successful enforcement action.

Triggering Events Requiring Notification

Under our proposed rule, clearing houses would report incidents without having to perform materiality analyses. They instead follow a list of notice-triggering events. The proposal states, ''the Commission believes that both DCOs and the Division will benefit from having a clear, bright line rule. . . .''

Clarity is important to both accountability and enforceability, and clear, well-considered rules should address the quickly changing environment faced by our clearing houses. For those reasons, I am interested in public comment on whether the proposed triggering events are sufficiently clear and complete to adapt to the ever-evolving cybersecurity threat landscape.

I am also interested in comment on whether the proposal encompasses incidents that may arise from the use of new or evolving technologies, including digital assets and algorithmic or artificial intelligence systems. I am similarly interested in public comment on whether our proposal would clearly apply to any cyber attack or other event that compromises, or may compromise, customer assets or property.

With threats that carry such severe harm, the goal for our final rule should be accountability and enforceability.

Timing Requirements for Notification

Under the existing rule, clearing houses are required to report incidents ''promptly.'' I am interested in public comment on whether the ''promptly'' timing requirement for notifications is sufficiently clear and complete as to when the CFTC expects notification. I am interested in public comment on whether the ''promptly'' timing requirement sufficiently evolves and adapts to the changing threat landscape, changes in technology, and risks associated with digital assets.

Given the severe threat and the pace at which things in markets change, I am also interested in public comment on whether the ''promptly'' timing ensures sufficient accountability and enforceability. I am interested in public comment about whether the Commission should complement the ''promptly'' timing standard with a defined time period of ''but no later than 24-hours after discovery'' (or other timeframe) in order to hold accountable, through supervision or enforcement, those clearing houses who delay notification until well after 24 hours and perhaps only after an investigation. However, I would not want a 24-hour defined time period to provide a reason for a clearing house to delay immediately notifying the Commission until just prior to 24 hours.

We can learn from the experience and approaches of our fellow regulators in this critical area as well. For example, the U.S. Securities and Exchange Commission recently proposed a four-day, bright-line rule for public disclosure of material cybersecurity incidents, specifically stating that an investigation of such incidents shall not delay disclosure. I am interested in public comment on whether it is clear that the ''promptly'' timing requirement means that an investigation shall not cause delay in notification, and if not clear, whether the Commission should explicitly address that in the final rule.[10]

Given the rapidly expanding cybersecurity threat, I am thankful that the Commission is considering expanding notification requirements, and I encourage staff to continue evaluating ways to enhance our regulatory regime to mitigate this threat.

Appendix 5—Statement of Commissioner Caroline D. Pham

I support the proposed amendments to the Reporting and Information Requirements for Derivatives Clearing Organizations (DCOs).

One of my priorities as Commissioner is to make progress on what's in front of the CFTC right now without taking too long. Today's proposal does just that, by proposing to fix an issue that arose two years ago in a prior Commission rulemaking.

There have been CFTC rules in the past where industry has been unable to implement the requirements because they did not fully account for market structure or operations. In many cases, the CFTC responds by getting stuck in an endless cycle of expiring and extending no-action relief until the rules are fixed to reflect reality, which sometimes never happens.

In this case, in January 2020, as part of a broad set of updates to its regulations applicable to DCOs, the Commission amended the daily reporting requirements for DCOs to require certain information at a more granular level than DCOs had ever been required to report.[1]

When the rules were finalized, CFTC staff learned of industry concerns about the ability of futures commission merchants to provide this information to DCOs. As a result, Division of Clearing and Risk staff issued a no-action letter extending the compliance date for this reporting requirement in order to resolve this issue.[2] Staff has already extended this relief once when the rule still had not yet been fixed.[3]

Thankfully, today's proposal would respond to the concerns raised by industry and fix the problem. It is an example of how the Commission can make progress on the many outstanding, necessary fixes to its rules. I thank and applaud the talented staff in the CFTC's Division of Clearing and Risk on their efforts, and I encourage the Commission to do so in other areas as well.

The notice of proposed rulemaking also makes certain other improvements to the DCO reporting and information requirements. Specifically, the proposed amendments would, among other things, update information requirements associated with commingling customer funds and positions in futures and swaps in the same account, address certain systems-related reporting obligations regarding exceptional events, revise certain daily and event-specific reporting requirements, and include in an appendix the fields that a DCO is required to provide on a daily basis.

I look forward to receiving comment on these issues. I encourage commenters to comment on whether the proposed rules are clear and impose any new undue costs and obligations on our market participants. I will carefully review comments with an eye toward ensuring the proposal ensures consistency with our statutory mandate, and properly balances the costs and benefits of the Commission's actions.

[FR Doc. 2022–26849 Filed 12–14–22; 8:45 am]

BILLING CODE 6351–01–P

[10] In March 2022, the U.S. Securities and Exchange Commission proposed a rule that issuers file a public Form 8–K within four days of a determination that a security incident is material. In contrast, the CFTC is not requiring public disclosure, but CFTC notification, which should take far less time. Securities and Exchange Commission, Proposed Rule, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, 87 FR 16590 (March 23, 2022).

[1] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4,800 (Jan. 27, 2020).

[2] CFTC Letter No. 21–01 (Dec. 31, 2020).

[3] CFTC Letter No. 21–31 (Dec. 22, 2021) (further extending the compliance date). This relief expires January 27, 2023.

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Part III

Environmental Protection Agency

40 CFR Part 84
Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under Subsection (i) the American Innovation and Manufacturing Act of 2020; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2021–0643; FRL–8831–01–OAR]

Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under Subsection (i) the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking and advance notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency is proposing to issue regulations to implement certain provisions of the American Innovation and Manufacturing Act, as enacted on December 27, 2020. This rulemaking proposes to: restrict the use of hydrofluorocarbons in specific sectors or subsectors in which they are used; establish a process for submitting technology transitions petitions; establish recordkeeping and reporting requirements; and address certain other elements related to the effective implementation of the American Innovation and Manufacturing Act. The proposed restrictions on the use of hydrofluorocarbons would, in part, address petitions granted on October 7, 2021, and September 19, 2022. The U.S. Environmental Protection Agency is also seeking advance information on certain topics that may be helpful to developing a future proposed rule including on restrictions on the use of hydrofluorocarbons for certain other sectors and subsectors and on a third-party auditing program to verify substances used in products.

DATES: Comments on this notice of proposed rulemaking must be received on or before January 30, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best ensured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before January 17, 2023. The U.S. Environmental Protection Agency (EPA) will hold a virtual public hearing on December 30, 2022. The date, time, and other relevant information for the virtual public hearing will be available at *https://www.epa.gov/climate-hfcs-reduction.*

ADDRESSES: You may send comments, identified by docket identification number EPA–HQ–OAR–2021–0643, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For information on EPA's Docket Center, please visit us online at *https://www.epa.gov/dockets.*

You may find the following suggestions helpful for preparing your comments: Direct your comments to specific sections of this proposed rulemaking and note where your comments may apply to future separate actions where possible; explain your views as clearly as possible; describe any assumptions that you used; provide any technical information or data you used that support your views; provide specific examples to illustrate your concerns; offer alternatives; and, make sure to submit your comments by the comment period deadline. Please provide any published studies or raw data supporting your position. 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 (*e.g.,* on the web, cloud, or other file sharing system).

Do not submit any information you consider to be Confidential Business Information (CBI) through *https://www.regulations.gov.* For submission of confidential comments, please work with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Allison Cain, Stratospheric Protection Division, Office of Atmospheric Programs (Mail Code 6205A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1566; email address: *cain.allison@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we," "us," "the Agency," or "our" is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

AC—Air Conditioning
AHAM—Association of Home Appliance Manufacturers
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
AIM Act—American Innovation and Manufacturing Act of 2020
ANSI—American National Standards Institute
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASTM—American Society for Testing and Materials
CAA—Clean Air Act
CARB—California Air Resources Board
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CBP—U.S. Customs and Border Protection
CDR—Chemical Data Reporting
CDX—Central Data Exchange
CFC—Chlorofluorocarbon
CO_2—Carbon Dioxide
DX—Direct Expansion
DOE—U.S. Department of Energy
EAV—Equivalent Annualized Value
ECHO—Enforcement and Compliance History Online
e-GGRT—Electronic Greenhouse Gas Reporting Tool
EIA—Environmental Investigation Agency
EPA—U.S. Environmental Protection Agency
EU—European Union
FR—**Federal Register**
GDP—Gross Domestic Product
GHG—Greenhouse Gas
GHGRP—Greenhouse Gas Reporting Program
GSHP—Ground-source Heat Pump
GVWR—Gross Vehicle Weight Rating
GWP—Global Warming Potential
HD—Heavy-duty
HC—Hydrocarbon
HCFC—Hydrochlorofluorocarbon
HCFO—Hydrochlorofluoroolefin
HCPA—Household and Commercial Products Association
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HPWH—Heat Pump Water Heater
IAM—Integrated Assessment Model
IAPMO—International Association of Plumbing and Mechanical Officials
ICC—International Code Council
ICR—Information Collection Request
IPR—Industrial Process Refrigeration
IIAR—International Institute of Ammonia Refrigeration
IPCC—Intergovernmental Panel on Climate Change

IWG—Interagency Working Group on the Social Cost of Greenhouse Gases
LD—Light-duty
LFL—Lower Flammability Limit
MAC—Marginal Abatement Cost
MDPV—Medium-duty Passenger Vehicle
$MMTCO_2$ e—Million Metric Tons of Carbon Dioxide Equivalent
MVAC—Motor Vehicle Air Conditioning
MY—Model Year
NAA—National Aerosol Association
NAICS—North American Industry Classification System
NATA—National Air Toxics Assessment
NFPA —National Fire Protection Association
NRDC—Natural Resources Defense Council
OEM—Original Equipment Manufacturer
ODS—Ozone-depleting Substance
OMB—U.S. Office of Management and Budget
PRA—Paperwork Reduction Act
PTAC—Packaged Terminal Air Conditioner
PTHP—Packaged Terminal Heat Pump
PV—Present Value
RACHP—Refrigeration, Air Conditioning, and Heat Pumps
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
RTOC—Refrigeration, Air Conditioning and Heat Pumps Technical Options Committee
SBREFA—Small Business Regulatory Enforcement Fairness Act
SC–HFCs—Social Costs of Hydrofluorocarbons
SNAP—Significant New Alternatives Policy
TEAP—Technology and Economic Assessment Panel
TLV–TWA—Threshold Limit Value-Time-Weighted Average
TRI—Toxics Release Inventory
TSD—Technical Support Document
UL—Underwriters Laboratories Inc
VRF—Variable Refrigerant Flow
WSHP—Water-source Heat Pump
WMO—World Meteorological Organization

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I. Executive Summary

A. What is the purpose of this proposed regulatory action?

The U.S. Environmental Protection Agency (EPA) is proposing regulations that would implement certain provisions of the American Innovation and Manufacturing Act of 2020, codified at 42 U.S.C. 7675 (AIM Act or the Act). The AIM Act authorizes EPA to address hydrofluorocarbons (HFCs) in three main ways: phasing down HFC production and consumption through an allowance allocation program; [1] promulgating certain regulations for purposes of maximizing reclamation and minimizing releases of HFCs and their substitutes from equipment; and facilitating sector-based transitions to next-generation technologies. This proposal focuses on the third area—facilitating the transition to next-generation technologies by restricting use of HFCs in the sectors or subsectors in which they are used.

Subsection (i) of the Act, entitled ''Technology Transitions,'' authorizes EPA, by rulemaking, to restrict the use of regulated substances (used interchangeably with ''HFCs'' in this document) in sectors or subsectors where the regulated substances are used.[2] The Act also includes provisions for the public to petition EPA to initiate such a rulemaking. On October 7, 2021, and September 19, 2022, EPA granted 12 petitions and partially granted one petition (hereby referred to as ''granted petitions'') requesting restrictions on the use of HFCs in various sectors and subsectors (86 FR 57141, October 14, 2021). The Act directs EPA to promulgate a final rule within two years after the date on which the Agency grants a petition. Thus, this proposed

[1] EPA has issued regulations establishing and codifying a framework for phasing down HFC production and consumption through an allowance allocation program, ''*Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act*'' (86 FR 55116, October 5, 2021). That rule is referred to as the ''Allocation Framework Rule'' throughout this document. EPA is currently undertaking a separate rulemaking to update certain aspects of that regulatory framework.

[2] The Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act.

rulemaking, in part, addresses the granted petitions.

This proposed rulemaking further addresses the framework for how EPA intends to implement its authority to restrict the use of HFCs in sectors and subsectors where they are used. Additionally, it proposes provisions to support implementation of, compliance with, and enforcement of statutory and regulatory requirements under subsection (i) of the Act. To provide the public with additional information about this new program, this document also includes a description of how EPA intends to implement certain aspects of the program, such as the processing of petitions to restrict the use of HFCs in sectors and subsectors in which they are used under subsection (i) of the Act.

Lastly, EPA is seeking advance information on certain topics that may be helpful for developing a future proposed rule. Specifically, EPA is seeking advance information on the application of restrictions on the use of HFCs to heat pump water heaters and to certain retrofitted equipment in the refrigeration, air conditioning, and heat pump (RACHP) sector. EPA is also seeking advance information on a third-party auditing program to verify substances used in products. EPA does not intend to finalize an auditing program or restrictions on the use of HFCs for those sectors and subsectors on which it is seeking advance information as part of this rulemaking process. Accordingly, EPA does not intend to respond to any advance information received on the options discussed in these sections in any final rulemaking for this proposal.

B. What is the summary of this proposed regulatory action?

Technology transitions petitions: EPA is proposing the process for petitions submitted under subsection (i) of the AIM Act and describes how the Agency intends to evaluate petitions. EPA is proposing that petitions be submitted electronically with required minimum information. Upon receiving a petition, the Agency will consider, to the extent practicable, the factors listed in subsection (i)(4) of the AIM Act in making a determination to grant or deny the petition. Consistent with the Act, EPA also considered these factors to the extent practicable in establishing the restrictions on the use of HFCs in this proposed rulemaking.

Restrictions on the use of HFCs: EPA is proposing restrictions on the use of certain HFCs within new products in the following sectors and subsectors: refrigeration, air conditioning, and heat pumps; foam blowing; and aerosols. All proposed restrictions would occur in two stages; the manufacture or import of products would be prohibited by either 2025 or 2026, depending on the sector or subsector, followed a year later by a prohibition on the sale, distribution, offer for sale or distribution, export, and other activities pertaining to those products.

Enforcement and compliance: To support compliance with the proposed prohibitions on the use of HFCs with high global warming potentials (GWPs) in specific sectors and subsectors, EPA is proposing labeling, reporting, and recordkeeping requirements for products imported or manufactured using an HFC. The Agency is proposing to use the same reporting platform used in prior AIM Act rules and the Greenhouse Gas Reporting Program (GHGRP).[3]

C. What is the summary of the costs and benefits?

EPA is providing information on the costs and benefits of restricting use of HFCs consistent with this proposed rule. The analyses, presented in the *Costs and Environmental Impacts* technical support document (TSD) and in a regulatory impact analysis (RIA) addendum to the Allocation Framework RIA, are contained in the docket to this proposed rule. These analyses—as summarized below—highlight economic cost and benefits, including benefits from HFC consumption and emissions reductions. While significant, the benefits presented in this summary are considered incidental and secondary to the rule's statutory objective of facilitating the transition to next-generation technologies by restricting use of HFCs in the sectors or subsectors in which they are used.

Given that the provisions EPA is proposing concern HFCs, which are subject to the overall phasedown of production and consumption under the AIM Act, EPA relied on previous analyses conducted for the Allocation Framework Rule (86 FR 55116, October 5, 2021) and the proposed 2024 Allocation Rule, ''Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years'' 87 FR 66372, November 3, 2022) as a starting point for the assessment of costs and benefits of this rule. In this way, EPA analyzed the potential incremental impacts of the proposed rule, attributing benefits only insofar as they are additional to those already assessed in the Allocation Framework RIA and proposed 2024 Allocation Rule RIA addendum (collectively referred to as ''Allocation Rules'' in this discussion).

As detailed in the RIA addendum and the *Costs and Environmental Impacts* TSD, additional benefits of the proposed rule relative to the Allocation Rules may vary depending on the mix and timing of industry transitions made in order to achieve compliance in affected subsectors. In its analysis of the Allocation Rules, EPA estimated that regulated entities would adopt specific technology transition options to achieve compliance with the statutory allowance cap step-downs. Industry is already making many of these transitions, and we expect that achieving the allowance cap step-downs will require many of the same subsector-specific technology transitions that would also be required by this proposed rule. However, the rule may in some cases require regulated entities to further accelerate transitions in specific subsectors, relative to what EPA previously assumed in its analysis of the Allocation Rules. Conversely, entities in a discrete set of subsectors not covered by this proposed rule could conceivably forgo or delay adopting abatement options that were assumed to be undertaken to comply with the Allocation Rules.

Given this uncertainty, EPA analyzed two scenarios to represent the range of potential incremental impacts resulting from the proposed rule: a ''base case'' and ''high additionality case.'' Both scenarios use the results from the Allocation Rule as a starting point, and count benefits in terms of reductions of consumption and emissions only in cases where the proposed rule would result in additional reductions in HFC consumption. The ''base case'' represents a conservative assessment of benefits and assumes that any industry activity not necessary for compliance is excluded. In other words, the scenario excludes consumption reductions not covered by a GWP restriction in the proposed rule and not needed to reach the phasedown cap (so long as the phasedown caps are otherwise met through consumption reductions in subsectors that are covered by the proposed rule restrictions). By contrast, the ''high additionality case'' is a less conservative scenario and assumes that HFC consumption reduction activities not covered by the proposed rule would remain consistent with the Allocation

[3] The GHGRP requires reporting of greenhouse gas (GHG) data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and carbon dioxide (CO_2) injection sites in the United States. The program generally requires reporting when emissions from covered sources are greater than 25,000 metric tons of CO_2e per year. Publicly available information includes facility names, addresses, and latitude/longitude information.

Rule reference scenario (*i.e.,* neither increase nor decrease in response to this proposed rule). Based on the results of these two scenarios, which are detailed further in the *Costs and Environmental Impacts* TSD and the RIA addendum, EPA estimates that additional emission reductions through 2050 would be 5 to 35 million metric tons of carbon dioxide equivalent ($MMTCO_2e$) annually.[4] These emission reductions generally lag the anticipated incidental consumption reductions, which range from 735 to 1,121 $MMTCO_2e$ for 2025–2050 at an annual average of 28 to 43 $MMTCO_2e$.

Table 1 summarizes the reductions in both consumption and emissions as described in the RIA addendum. The table shows the incremental annual reductions—that is, the difference in reductions compared to the Allocation Rule reference scenario—from the proposed rule for selected years in the time period 2025–2050. Both the base case and high additionality case results show a net reduction in consumption and emissions on a cumulative basis through 2050. Emissions under the proposed rule would decrease compared to the business-as-usual estimates shown in the RIA, however they would not decrease as much as under the Allocation Rule reference scenario for certain model years. For these years, incremental emission reductions are therefore shown as negative numbers in the table. This effect is due to assumptions about the technological solutions used to comply with each rule. Specifically, the base case excludes actions not required by this proposed rule, such as improved leak reduction and enhanced recovery of HFCs, which are assumed to otherwise yield relatively rapid emission reductions. Since the Allocation Rule reference scenario includes those actions, incremental emission reductions in the base case accrue more slowly (and therefore are shown as negative in certain years) while still yielding a net reduction on a cumulative basis.

TABLE 1—INCREMENTAL CONSUMPTION AND EMISSION REDUCTIONS IN THE TECHNOLOGY TRANSITIONS RULE BASE CASE AND HIGH ADDITIONALITY CASE

Year	Incremental consumption reductions ($MMTCO_2e$)		Incremental emission reductions ($MMTCO_2e$)	
	Technology transitions rule base case	Technology transitions high additionality case	Technology transitions rule base case	Technology transitions high additionality case
2025	9	42	−52	8
2029	27	53	−13	34
2034	35	49	2	43
2036	34	42	−3	36
2040	21	29	27	40
2045	35	44	27	37
2050	37	46	30	38
Total (cumulative)	735	1121	134	903

As reflected in the RIA addendum, however, although the base case is a reasonable projection of the potential impacts of the proposed rule, there is reason to believe that it is a conservative one, and that the incremental emission reductions associated with this proposal could be far greater than reflected in the base case scenario. Previous regulatory programs to reduce chemical use in the affected industries show that regulated entities do not limit their response to the required compliance level; rather, regulated entities may take additional actions that transform industry practices for various reasons, including the anticipation of future restrictions, strengthening their competitive position, and supporting overall environmental goals. For example, U.S. production and consumption of ozone-depleting substances (ODS) during their phaseout was consistently below the limits established under the Montreal Protocol. For this reason, in the high additionality case we assumed certain abatement options not covered by the proposed rule—but which were assumed in the prior accounting of benefits for the Allocation Rules—continue to be undertaken. Based on the two scenarios, on a cumulative basis the rule is expected to yield incremental emission reductions ranging from 134 to 903 $MMTCO_2e$ through 2050 (respectively, about 3 percent and 20 percent of the total emissions over that same time period in the Allocations Rules analyses). In the RIA addendum, we estimate the present value of these incremental benefits to be between $5 billion and $51 billion in 2020 dollars.

EPA also estimates that the proposed rule would result in lower compliance costs relative to the Allocation Rules. These additional savings stem largely from assumed energy efficiency gains and lower cost refrigerants associated with the technological transitions necessary to meet the proposed requirements. The present value of these cumulative incremental savings from 2025–2050 is estimated to be between $2.2 billion and $4.2 billion, using a 7 percent discount rate, or between $5.1 billion and $8 billion, using a 3 percent discount rate (in 2020 dollars).

Table 2 summarizes key findings from the RIA addendum, including the incremental annual climate benefits, costs, and net benefits of the rule for selected years in the time period 2025–2050, with the climate benefits discounted at 3 percent, for the base case and high additionality case. The table also provides the present value (PV) and equivalent annualized value (EAV) of the annual costs under a 3% and 7% discount rate. We note that the climate benefits and net benefits findings were not used for decisional purposes in this proposed rule and are

[4] As noted in the Allocation Framework Rule, the exchange values provided in the AIM Act are numerically equivalent to the 100-year integrated global warming potentials provided in IPCC (2007). EPA provides values in CO_2e and notes here that the same values would be used if expressed in exchange value equivalents.

provided for informational and illustrative purposes only.

TABLE 2—SUMMARY OF ANNUAL INCREMENTAL CLIMATE BENEFITS, COSTS, AND NET BENEFITS OF THE TECHNOLOGY TRANSITIONS RULE BASE CASE AND HIGH ADDITIONALITY CASE SCENARIOS FOR THE 2025–2050 TIMEFRAME

[Millions of 2020$, discounted to 2022] [a b c d e]

	Base case			High additionality case		
Year	Incremental climate benefits (3%)	Annual costs (negative values are savings)	Net benefits (3% benefits, 3% or 7% costs) [e]	Incremental climate benefits (3%)	Annual costs (negative values are savings)	Net benefits (3% benefits, 3% or 7% Costs) [e]
2025	−$3,603	−$395	−$3,209	$546	$31	$515
2029	−1,043	50	−1,092	2,563	335	2,227
2034	141	−200	340	3,739	−77	3,816
2036	−404	−677	273	3,213	−635	3,848
2040	2,669	−848	3,516	3,928	−784	4,712
2045	2,946	−786	3,732	4,031	−717	4,748
2050	3,606	−817	4,422	4,677	−743	5,419

Discount rate	3%	3%	7%	3%	7%	3%	3%	7%	3%	7%
PV	$5,084	−$8,045	−$4,225	$13,130	$9,309	$51,145	−$5,140	−$2,190	$56,285	$53,335
EAV	$311	−$492	−$438	$803	$748	$3,126	−$314	−$227	$3,440	$3,353

[a] Benefits include only those related to climate. Climate benefits are based on changes in HFC emissions and are calculated using four different estimates of the SC–HFCs (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For purposes of this table, we show the effects associated with the model average at a 3 percent discount rate, but the Agency does not have a single central SC–HFC point estimate. We emphasize the importance and value of considering the benefits calculated using all four SC–HFC estimates. As discussed in Chapter 5 of the RIA addendum a consideration of climate effects calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts.
[b] Rows may not appear to add correctly due to rounding.
[c] The annualized present value of costs and benefits are calculated as if they occur over a 26-year period from 2025 to 2050.
[d] The costs presented in this table are annual estimates.
[e] The PV for the 7% net benefits column is found by taking the difference between the PV of climate benefits at 3% and the PV of costs discounted at 7%. Due to the intergenerational nature of climate impacts the social rate of return to capital, estimated to be 7 percent in OMB's Circular A–4, is not appropriate for use in calculating PV of climate benefits.

Some of the information regarding projected impacts of the rule, including cost estimates and anticipated environmental impacts, was considered by EPA in its assessment of certain factors listed in subsection (i)(4) of the AIM Act.[5] The cost and benefit information relied upon by EPA in its consideration of the subsection (i)(4) factors is compiled in the *Costs and Environmental Impacts* TSD. As discussed in section VII.E, EPA chose to use certain cost and environmental benefit information that it had generated in conducting its RIA addendum in considering certain factors under subsection (i)(4), but we expect that in future rulemakings we may consider different types of information to address the (i)(4) factors. In assessing the (i)(4) factors for this proposed rule, as summarized in the *Costs and Environmental Impacts* TSD, EPA considered estimates of costs of the proposed action and estimates of cumulative consumption and emission reductions for 2025–2050 of 735 to 1,121 $MMTCO_2e$ and 134 to 903 $MMTCO_2e$, respectively, neither of which incorporate the social costs of HFCs (SC–HFCs).

Although EPA is using SC–HFCs for purposes of some of the analysis in the RIA addendum, this proposed action does not rely on those estimates of these costs as a record basis for the Agency action, and EPA would reach the proposed conclusions even in the absence of the social costs of HFCs.

Additional information on this analysis can be found in section X of this preamble and in the *Costs and Environmental Impacts* TSD and RIA addendum contained in the docket.

II. General Information

A. Does this action apply to me?

You may be potentially affected by this rule if you manufacture, import, export, package, sell or otherwise distribute products that use or are intended to use HFCs, such as refrigeration and air-conditioning (AC) systems, foams, and aerosols. You may also be potentially affected by this action if you produce, import, export, destroy, use as a feedstock, reclaim, package, or otherwise distribute HFCs. Potentially affected categories, by North American Industry Classification System (NAICS) code, are included in Table 3.

TABLE 3—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS code	NAICS industry description
238220	Plumbing, Heating, and Air-Conditioning Contractors.
311812	Commercial Bakeries.
321999	All Other Miscellaneous Wood Product Manufacturing.
322299	All Other Converted Paper Product Manufacturing.
324191	Petroleum Lubricating Oil and Grease Manufacturing.
324199	All Other Petroleum and Coal Products Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.

[5] Subsection (i)(4) of the AIM Act contains a list of factors that the statute directs EPA to consider, to the extent practicable, when carrying out a rulemaking or making a determination to grant or deny a petition.

TABLE 3—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES—Continued

NAICS code	NAICS industry description
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326150	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
333912	Air and Gas Compressor Manufacturing.
333999	All Other Miscellaneous General Purpose Machinery Manufacturing.
334419	Other Electronic Component Manufacturing.
335220	Major Household Appliance Manufacturing.
336120	Heavy Duty Truck Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
3363	Motor Vehicle Parts Manufacturing.
3364	Aerospace Product and Parts Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing.
337214	Office Furniture (Except Wood) Manufacturing.
339112	Surgical and Medical Instrument Manufacturing.
339113	Surgical Appliance and Supplies Manufacturing.
339999	All Other Miscellaneous Manufacturing.
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers.
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.
423690	Other Electronic Parts and Equipment Merchant Wholesalers.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423850	Service Establishment Equipment and Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
423990	Other Miscellaneous Durable Goods Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers.
443142	Electronics Stores.
444190	Other Building Material Dealers.
445110	Supermarkets and Other Grocery (except Convenience) Stores.
445131	Convenience Retailers.
445298	All Other Specialty Food Retailers.
449210	Appliance Stores, Household-Type.
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).
45711	Gasoline Stations With Convenience Stores.
481111	Scheduled Passenger Air Transportation.
531120	Lessors of Nonresidential Buildings (except Miniwarehouses).
541330	Engineering Services.
541380	Testing Laboratories.
541512	Computer Systems Design Services.
541519	Other Computer Related Services.
541620	Environmental Consulting Services.
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
621498	All Other Outpatient Care Centers.
621999	All Other Miscellaneous Ambulatory Health Care Services.
72111	Hotels (Except Casino Hotels) and Motels.
72112	Casino Hotels.
72241	Drinking Places (Alcoholic Beverages).
722513	Limited-Service Restaurants.
722514	Cafeterias, Grill Buffets, and Buffets.
722515	Snack and Nonalcoholic Beverage Bars.
81119	Other Automotive Repair and Maintenance.
811219	Other Electronic and Precision Equipment Repair and Maintenance.
811412	Appliance Repair and Maintenance.
922160	Fire Protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA expects could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity may be regulated by this action, you should carefully examine the regulatory text at the end of this document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What is EPA's authority for taking this action?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (codified at 42 U.S.C. 7675). In subsection (k)(1)(A), the AIM Act provides EPA with the authority to promulgate necessary regulations to carry out EPA's functions under the Act, including its obligations to ensure that the Act's requirements are satisfied. Subsection (k)(1)(C) of the Act also provides that Clean Air Act (CAA) sections 113, 114, 304, and 307 apply to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of title VI of the CAA. Accordingly, this rulemaking is subject to CAA section 307(d) (see 42 U.S.C. 7607(d)(1)(I)) (CAA section 307(d) applies to ''promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection)'').

The AIM Act authorizes EPA to address HFCs by providing new authorities in three main areas: phasing down the production and consumption of listed HFCs; managing these HFCs and their substitutes; and facilitating the transition to next-generation technologies by restricting use of these HFCs in the sector or subsectors in which they are used. This rulemaking focuses on the third area: the transition to next-generation technologies by restricting use of these HFCs in the sector or subsectors in which they are used.

Subsection (i) of the AIM Act, ''Technology Transitions,'' provides that ''the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used.'' 42 U.S.C. 7675(i)(1). The Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act.[6] (42 U.S.C. 7675(c)(1)). EPA is also authorized to designate additional substances that meet certain criteria as regulated substances (42 U.S.C. 7675(c)(3)). EPA has not so designated any additional substances, and the list of 18 regulated substances can also be found in appendix A of 40 CFR part 84. Through this rule, EPA is proposing to restrict the use of certain HFCs, whether neat or used in a blend, in specific sectors or subsectors, based on EPA's consideration of the factors listed in (i)(4) of the AIM Act.

A rulemaking restricting the use of regulated substances in sectors or subsectors can be initiated by EPA on its own accord, or a person may petition EPA to promulgate such a rule. Specifically, subsection (i)(3)(A) states, ''A person may petition the Administrator to promulgate a rule under subsection (i)(1) for the restriction on use of a regulated substance in a sector or subsector.'' Where the Agency grants such a petition submitted under subsection (i), the statute requires that ''the Administrator shall promulgate a final rule not later than 2 years after the date on which the Administrator grants the petition.'' (42 U.S.C. 7675(i)(3)(C)(ii)). Thus, EPA is addressing the granted petitions under subsection (i) in this proposed action.

Furthermore, prior to proposing a rule, subsection (i)(2)(A) directs EPA to consider negotiating with stakeholders in the sector or subsector subject to the potential rule in accordance with negotiated rulemaking procedures established under subchapter III of chapter 5 of title 5, United States Code (commonly known as the ''Negotiated Rulemaking Act of 1990''). A brief discussion on EPA's consideration of using negotiated rulemaking procedures and its decision not to negotiate with stakeholders prior to this proposal can be found in section VI.B of this preamble.

In addition to proposing HFC use restrictions, this proposal includes measures designed to assist with enforcement and to help ensure compliance with those use restrictions, including recordkeeping, reporting, and labeling requirements. The proposed reporting requirements are also intended to inform EPA of market dynamics and the transitions that are occurring in those sectors and subsectors addressed by this rulemaking. EPA notes that subsection (k)(1)(C) of the AIM Act states that section 114 of the CAA applies to the AIM Act and rules promulgated under it as if the AIM Act were included in title VI of the CAA. Thus, section 114 of the CAA, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA, also applies to and supports this rulemaking.

III. Background

A. What are HFCs?

HFCs are anthropogenic[7] fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. HFCs are potent greenhouse gases (GHGs) with 100-year GWPs (a measure of the relative climatic impact of a GHG) that can be hundreds to thousands of times more potent than carbon dioxide (CO_2).

HFC use and emissions[8] have been growing worldwide due to the global phaseout of ODS under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and the increasing use of refrigeration and air-conditioning equipment globally. HFC emissions had previously been projected to increase substantially over the next several decades. In 2016, in Kigali, Rwanda, countries agreed to adopt an amendment to the Montreal Protocol, known as the Kigali Amendment, which provides for a global phasedown of the production and consumption of HFCs. Global adherence to the Kigali Amendment would substantially reduce future emissions, leading to a peaking of HFC emissions before 2040.[9 10]

Atmospheric observations of most currently measured HFCs confirm their abundances are increasing at

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[6] As noted previously in this document, ''regulated substance'' and ''HFC'' are used interchangeably in this document.

[7] While the overwhelming majority of HFC production is intentional, EPA is aware that HFC–23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)-22.

[8] World Meteorological Organization (WMO), Scientific Assessment of Ozone Depletion: 2018, World Meteorological Organization, Global Ozone Research and Monitoring Project—Report No. 58, 588 pp., Geneva, Switzerland, 2018. Available at: *https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf.*

[9] Ibid.

[10] A recent study estimated that global compliance with the Kigali Amendment is expected to lower 2050 annual emissions by 3.0–4.4 Million Metric Tons of Carbon Dioxide Equivalent ($MMTCO_2e$). Guus J.M. Velders et al. Projections of hydrofluorocarbon (HFC) emissions and the resulting global warming based on recent trends in observed abundances and current policies. Atmos. Chem. Phys., 22, 6087–6101, 2022. Available at: *https://doi.org/10.5194/acp-22-6087-2022.*

accelerating rates. Total emissions of HFCs increased by 23 percent from 2012 to 2016 and the four most abundant HFCs in the atmosphere, in GWP-weighted terms, are HFC–134a, HFC–125, HFC–23, and HFC–143a.[11]

In 2016, HFCs excluding HFC–23 accounted for a radiative forcing of 0.025 W/m^2. This is a 36 percent increase in total radiative forcing due to HFCs relative to 2012. This radiative forcing was projected to increase by an order of magnitude to 0.25 W/m^2 by 2050. If the Kigali Amendment were to be fully implemented, it would be expected to reduce the future radiative forcing due to HFCs (excluding HFC–23) to 0.13 W/m^2 in 2050 which is a reduction of about 50 percent compared to the radiative forcing projected in the business-as-usual scenario of uncontrolled HFCs.[12]

The 18 HFCs listed as regulated substances by the AIM Act are the most commonly used HFCs and have high impacts as measured by the quantity of each substance emitted multiplied by their respective GWPs.[13] These 18 HFCs are all saturated, meaning they have only single bonds between their atoms and therefore have longer atmospheric lifetimes.

In the United States, HFCs are used primarily in refrigeration and air-conditioning equipment in homes, commercial buildings, and industrial operations (~75 percent of total HFC use in 2018) and in air conditioning in vehicles and refrigerated transport (~8 percent). Smaller amounts are used in foam products (~11 percent), aerosols (~4 percent), fire protection systems (~1 percent), and solvents (~1 percent).[14]

EPA estimated in the Allocation Framework Rule that phasing down HFC production and consumption according to the schedule provided in the AIM Act will avoid cumulative consumption of 3,152 million metric tons of exchange value equivalent (MMTEVe) of HFCs in the United States for the years 2022 through 2036 (86 FR 55116, October 5, 2021). That estimate included both consumption as defined in § 84.3—*i.e.,* with respect to a regulated substance, bulk production plus bulk imports minus bulk exports—and, although not requiring AIM Act allowances, the amount in imported products containing a regulated substance, for the abatement options necessary to meet the HFC cap. Annual avoided consumption was estimated at 42 $MMTCO_2e$ in 2022 and 282 $MMTCO_2e$ in 2036. In order to calculate the climate benefits associated with consumption abatement, the consumption changes were expressed in terms of emissions reductions. EPA estimated that for the years 2022–2050 that action will avoid emissions of 4,560 $MMTCO_2e$ of HFCs in the United States. The annual avoided emissions are estimated at 22 $MMTCO_2e$ in the year 2022 and 171 $MMTCO_2e$ in 2036. More information regarding these estimates is provided in the Allocation Framework RIA in the docket.

B. How do HFCs affect public health and welfare?

Elevated concentrations of GHGs including HFCs have been warming the planet, leading to changes in the Earth's climate including changes in the frequency and intensity of heat waves, precipitation, and extreme weather events; rising seas; and retreating snow and ice. The changes taking place in the atmosphere are a result of the well-documented buildup of GHGs due to human activities and are changing the climate at a pace and in a way that threatens human health, society, and the natural environment. In this section, EPA is providing some scientific background on climate change to offer additional context for this rulemaking and to help the public understand the environmental impacts of GHGs such as HFCs.

Extensive additional information on climate change is available in the scientific assessments and EPA documents that are briefly described in this section, as well as in the technical and scientific information supporting them. One of those documents is EPA's 2009 Endangerment and Cause or Contribute Findings for Greenhouse Gases Under section 202(a) of the Clean Air Act (CAA) (74 FR 66496, December 15, 2009).[15] In the 2009 Endangerment Finding, the Administrator found under section 202(a) of the CAA that elevated atmospheric concentrations of six key well-mixed GHGs—CO_2, methane (CH_4), nitrous oxide (N_2O), HFCs, perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)—''may reasonably be anticipated to endanger the public health and welfare of current and future generations'' (74 FR 66523, December 15, 2009). The 2009 Endangerment Finding, together with the extensive scientific and technical evidence in the supporting record, documented that climate change caused by human emissions of GHGs (including HFCs) threatens the public health of the population of the United States. It explained that by raising average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses (74 FR 66497, December 15, 2009). It noted that while climate change also increases the likelihood of reductions in cold-related mortality, evidence indicates that the increases in heat mortality will be larger than the decreases in cold mortality in the United States (74 FR 66525, December 15, 2009). The 2009 Endangerment Finding further explained that compared with a future without climate change, climate change is expected to increase tropospheric ozone pollution over broad areas of the United States, including in the largest metropolitan areas with the worst tropospheric ozone problems, and thereby increase the risk of adverse effects on public health (74 FR 66525, December 15, 2009). Climate change is also expected to cause more intense hurricanes and more frequent and intense storms of other types and heavy precipitation, with impacts on other areas of public health, such as the potential for increased deaths, injuries, infectious and waterborne diseases, and stress-related disorders (74 FR 66525, December 15, 2009). Children, the elderly, and the poor are among the most vulnerable to these climate-related health effects (74 FR 66498, December 15, 2009).

The 2009 Endangerment Finding also documented, together with the extensive scientific and technical evidence in the supporting record, that climate change touches nearly every aspect of public welfare [16] in the United

[11] WMO, 2018.

[12] Ibid.

[13] The AIM Act uses exchange values which are numerically equivalent to the 100-year GWP of the chemical as given in the Errata to Table 2.14 of the IPCC's 2007 Fourth Assessment Report (AR4).

[14] Calculations based on EPA's Vintaging Model, which estimates the annual chemical emissions from industry sectors that historically used ODS, including refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. The model uses information on the market size and growth for each end use, as well as a history and projections of the market transition from ODS to substitutes. The model tracks emissions of annual ''vintages'' of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. Additional information on these estimates is available in U.S. EPA, April 2016. EPA Report EPA–430–R–16–002. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014.*

[15] In describing these 2009 Findings in this proposal, EPA is neither reopening nor revisiting them.

[16] The CAA states in section 302(h) that ''[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife,

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States with resulting economic costs, including: changes in water supply and quality due to changes in drought and extreme rainfall events; increased risk of storm surge and flooding in coastal areas and land loss due to inundation; increases in peak electricity demand and risks to electricity infrastructure; and the potential for significant agricultural disruptions and crop failures (though offset to some extent by carbon fertilization). These impacts are also global and may exacerbate problems outside the United States that raise humanitarian, trade, and national security issues for the United States (74 FR 66530, December 15, 2009).

In 2016, the Administrator similarly issued Endangerment and Cause or Contribute Findings for greenhouse gas emissions from aircraft under section 231(a)(2)(A) of the CAA (81 FR 54422, August 15, 2016).[17] In the 2016 Endangerment Finding, the Administrator found that the body of scientific evidence amassed in the record for the 2009 Endangerment Finding compellingly supported a similar endangerment finding under CAA section 231(a)(2)(A) and also found that the science assessments released between the 2009 and the 2016 Findings ''strengthen and further support the judgment that GHGs in the atmosphere may reasonably be anticipated to endanger the public health and welfare of current and future generations'' (81 FR 54424, August 15, 2016).

Since the 2016 Endangerment Finding, the climate has continued to change, with new records being set for several climate indicators such as global average surface temperatures, greenhouse gas concentrations, and sea level rise. Additionally, major scientific assessments continue to be released that further improve our understanding of the climate system and the impacts that GHGs have on public health and welfare both for current and future generations. According to the Intergovernmental Panel on Climate Change's (IPCC) Sixth Assessment Report, ''it is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.'' [18] These updated observations and projections document the rapid rate of current and future climate change both globally and in the United States.[19 20 21 22]

C. How is EPA evaluating environmental justice?

EPA provides the following discussion of the Agency's assessment of environmental justice impacts in relationship to this proposal. This analysis is intended to provide the public with information on the potential environmental justice impacts of this action, if finalized as proposed, and to comply with executive orders. This analysis was not used for purposes of EPA's consideration of the statutory factors under AIM Act subsection (i)(4). Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021) establish federal executive policy on environmental justice. Executive Order 12898's main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on people of color and low-income populations in the United States. EPA defines environmental justice 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.[23] Meaningful involvement means that: (1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory Agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.[24] The term ''disproportionate impacts'' refers to differences in impacts or risks that are extensive enough that they may merit Agency action. In general, the determination of whether there is a disproportionate impact that may merit Agency action is ultimately a policy judgment which, while informed by analysis, is the responsibility of the decision-maker. The terms ''difference'' or ''differential'' indicate an analytically discernible distinction in impacts or risks across population groups. It is the role of the analyst to assess and present differences in anticipated impacts across population groups of concern for both the baseline and proposed regulatory options, using the best available information (both quantitative and qualitative) to inform the decision-maker and the public.[25]

A regulatory action may involve potential environmental justice concerns if it could: (1) create new disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples through the action under development.

Executive Order 14008 calls on agencies to make achieving environmental justice part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-

weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.'' 42 U.S.C. 7602(h).

[17] In describing these 2016 Findings in this proposal, EPA is neither reopening nor revisiting them.

[18] IPCC, 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Pe´an, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press. In Press: 4.

[19] USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018. Available at: *https://nca2018.globalchange.gov.*

[20] IPCC, 2021.

[21] National Academies of Sciences, Engineering, and Medicine, 2019. Climate Change and Ecosystems. Washington, DC: The National Academies Press. Available at: *https://doi.org/10.17226/25504.*

[22] NOAA National Centers for Environmental Information, State of the Climate: Global Climate Report for Annual 2020, published online January 2021. Available at: *https://www.ncdc.noaa.gov/sotc/global/202013.*

[23] See, *e.g.,* Environmental Protection Agency. ''*Environmental Justice.*'' Available at: *https://www.epa.gov/environmentaljustice.*

[24] The criteria for meaningful involvement are contained in EPA's May 2015 document ''*Guidance on Considering Environmental Justice During the Development of an Action.*'' Environmental Protection Agency, 17 Feb. 2017. Available at: *https://www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action.*

[25] The definitions and criteria for ''disproportionate impacts,'' ''difference,'' and ''differential'' are contained in EPA's June 2016 document ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.'' Available at: *https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis.*

related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' Executive Order 14008 further declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure, and health care.''

In addition, the Presidential Memorandum on Modernizing Regulatory Review calls for procedures to ''take into account the distributional consequences of regulations, including as part of a quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit, and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.'' [26] EPA also released its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' (2016 Technical Guidance) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance.[27]

The Allocation Framework Rule, among other things, established the framework for the United States' phasedown of HFCs, which will achieve significant benefits by reducing production and consumption of certain chemicals with high GWPs. In that rulemaking, EPA described the environmental justice analysis conducted in support of the rule and summarized the public health and welfare effects of GHG emissions (including HFCs), including information that certain parts of the population may be especially vulnerable to climate change risks based on their characteristics or circumstances, including the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, and/or indigenous populations dependent on one or limited resources due to factors including but not limited to geography, access, and mobility. Potential impacts of climate change raise environmental justice issues. Low-income communities, for example, can be especially vulnerable to climate change impacts because they tend to have more limited capacity to bear the costs of adaptation and are more dependent on climate-sensitive resources such as local water and food supplies. In corollary, some communities of color, specifically populations defined jointly by both ethnic/racial characteristics and geographic location, may be uniquely vulnerable to climate change health impacts in the United States.

Many of the environmental justice implications of this proposed rule are similar to those addressed at length in the RIA [28] developed for the Allocation Framework Rule. The analysis of potential environmental justice concerns for the Allocation Framework Rule focused mainly on characterizing baseline emissions of air toxics that are also associated with chemical feedstock use for HFC production. As detailed in the RIA for the Allocation Framework Rule, the phasedown of high-GWP HFCs in the United States will reduce GHG emissions, thereby reducing damages associated with climate change that would have been associated with those emissions. Similar to the Allocation Framework Rule, EPA expects that this proposed rule would reduce GHG emissions, which would benefit populations that may be especially vulnerable to damages associated with climate change. We also expect that the restriction on use of certain HFCs will increase the production of HFC substitutes. However, there continues to be significant uncertainty about how the transition to lower-GWP substitutes and market trends independent of this proposed rulemaking could affect production of predominant HFC substitutes, such as hydrocarbons, ammonia (R–717), and hydrofluoroolefins (HFOs), at individual facilities and how those changes in production could affect associated air pollutant emissions, particularly in communities that are disproportionately burdened by air pollution. Some predominant HFC substitutes, such as HFOs, use the same chemicals used in the manufacture of HFCs as feedstocks in their production or release the same chemicals as byproducts, potentially raising concerns about local exposure. Due to the limitations of the current data, we cannot make conclusions about the impact this proposed rule may have on individuals or specific communities near facilities producing HFC substitutes. For the purpose of environmental justice, however, it is important to understand the characteristics of the communities surrounding these facilities to better ensure that future actions, as more information becomes available, can improve outcomes.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an environmental justice analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline and regulatory options. Therefore, for this proposed rule, EPA followed the format used for the Allocation Framework RIA to analyze the demographic characteristics and baseline exposure of the communities near facilities producing HFC substitutes. The complete analysis is described in the RIA addendum developed for this proposed rule, which is available in the docket. EPA relied on public data from the Toxics Release Inventory (TRI),[29] GHGRP, Chemical Data Reporting (CDR) Program,[30] EJScreen (an environmental justice mapping and screening tool developed by EPA), Enforcement and Compliance History Online (ECHO), Census data, and information provided by industry stakeholders to identify the facilities. In addition, Air Toxics Screening Assessment (AirToxScreen, formerly National Air Toxics Assessment (NATA)) data from 2017 (the most recent year available) for census tracts within and outside of a 1-, 3-, 5-, and 10-mile distance were used to approximate the cumulative baseline cancer and respiratory risk due to air toxics exposure for communities near the production facilities.

[26] Presidential Memorandum on Modernizing Regulatory Review, January 20, 2021. Available at: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/.*

[27] Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, June 2016. Available at: *https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

[28] The RIA for the Allocation Framework Rule is available in the docket for that rulemaking at: *https://www.regulations.gov/document/EPA-HQ-OAR-2021-0044-0227.*

[29] TRI tracks the management of certain toxic chemicals that may pose a threat to human health and the environment. U.S. facilities in different industry sectors must report annually how much of each chemical is released to the environment and/or managed through recycling, energy recovery, and treatment. Facilities submit a TRI Form R for each TRI-listed chemical it manufactures, processes, or otherwise uses in quantities above the reporting threshold.

[30] The CDR program, under the Toxic Substances Control Act, requires manufacturers (including importers) to provide EPA with information on the production and use of chemicals in commerce. Under the CDR rule, EPA collects information on the types, quantities, and uses of chemical substances produced domestically and imported into the United States. The information is collected every four years from manufacturers of certain chemicals in commerce generally when production volumes are 25,000 pounds or greater for a specific reporting year.[30]

With the restriction on use of certain HFCs, EPA anticipates that the production of HFC substitutes will increase. Accordingly, for the environmental justice analysis for this proposed rule, EPA identified 14 facilities producing predominant HFC substitutes that may be impacted by this proposed rule and where production changes may impact nearby communities. The relatively small number of facilities that may be affected by this rule enabled EPA to assemble a uniquely granular assessment of the characteristics of the facilities and the communities where they are located. Overall, this proposed rule would reduce GHG emissions, which would benefit populations that may be especially vulnerable to damages associated with climate change. However, the manner in which producers transition from high-GWP HFCs could drive changes in future risk for communities living near facilities that produce HFC substitutes, to the extent the use of toxic feedstocks, byproducts, or catalysts changes, and those chemicals are released into the environment with adverse local effects.

The environmental justice analysis, which examines racial and economic demographic and health risk information, found heterogeneity in community characteristics around individual facilities. The analysis showed that individuals identified as African American or Black and as Hispanic with respect to race live in proximity to the identified facilities compared with the national average or the rural areas national average. Importantly, the comparison to the rural area national average is more striking, because so many of the facilities are rural. While median income is not significantly different for the communities near the facilities (slightly lower than the national average but slightly above or equal to the rural median income), there are more very low-income households in these communities. Additionally, total cancer risk and total respiratory risk is higher than either the rural national average or the overall national average in communities near the facilities. The analysis shows that the risks are higher for those within the 1-mile average radius and decrease at the 3-mile, 5-mile, and 10-mile radii.

EPA notes that the averages may obfuscate potentially large differences in the community characteristics surrounding individual production facilities. Analysis of the demographic characteristics and AirToxScreen data for the 14 facilities identified shows that there are significant differences in the communities near these facilities. The racial, ethnic, and income results are varied but, in almost all cases, total cancer risk and total respiratory risk are higher for the communities in proximity to the sites than to the appropriate (rural or overall) average when compared with the national or state results.

Additionally, some facilities are in communities that are quite different from the aggregate results discussed in this section above. The aggregate results show that the communities near the facilities identified tend to have slightly fewer neighboring individuals identified as White, and more identified as African American or Black and as Hispanic with respect to race, in several cases. In several cases, however, the communities near specific facilities have higher percentages of White individuals than either the state or national averages. This is true for the facilities in San Dimas, CA; Sibley, LA; El Dorado, AR; Gregory, and Manvel, TX, along with those in Iowa, Illinois, and West Virginia.

EPA is including a demonstration of a microsimulation approach in the RIA addendum to analyze the proximity of communities to potentially affected facilities. Microsimulation is a technique relying upon advanced statistics and data science to combine disparate survey and geospatial data. It has long been used in a variety of economic and social science research and has been used before by EPA (in the context of understanding the implications of underground storage tank impacts on groundwater). Recent advances in data science and computational power have increased the availability of microsimulation for applications such as environmental justice analysis. The demonstration analysis included in the RIA addendum contributes to understanding communities that may warrant further environmental justice analysis.

EPA seeks comment and further discussion of the use of microsimulation approaches and techniques for regulatory impact analysis and other program activities. Among other things, EPA seeks information on what microsimulation tools are appropriate for better understanding the burdens faced by communities, and in what circumstances. The demonstration analysis presented in the RIA addendum uses a dataset of ''synthetic households'' based on geospatial data combined through microsimulation techniques with information from the U.S. Decennial Census and the American Communities Survey (ACS). EPA requests comment on other surveys or other geospatial datasets should be the focus of EPA efforts to combine with the ACS and/or Decennial Census data; how microsimulation tools supplement other EPA tools for understanding demographics, multiple burdens facing communities, and assessing the impact of EPA programs; and how microsimulation and other techniques to use current survey information can be used to identify data gaps which might be filled with refinements or improvements to existing survey tools.

In considering potential additional analysis for a final rule based on this proposal, EPA is also considering assessing the estimated exposure of the communities near the identified facilities to toxics using the Risk Screening Environmental Index Geographic Microdata (RSEI–GM). The Agency seeks comment on whether this additional analysis would be useful and what additional insight it might provide for the environmental justice analysis.

EPA noted in the Allocation Framework Rule, and reiterates here, that it is not clear the extent to which these baseline risks are directly related to potential future HFC substitute production, but some feedstocks, catalysts, and byproducts are toxic, particularly with respect to potential carcinogenicity (*e.g.,* carbon tetrachloride). All HFC substitute production facilities are near other industrial facilities that could contribute to the cumulative AirToxScreen cancer and respiratory risk, and, at this time, it is not clear how emissions related to HFC substitute production compare to other chemical production at the same or nearby facilities. Because of the limited information regarding where substitutes will be produced and what other factors might affect production and emissions at those locations, it's unclear to what extent this rule may affect baseline risks from hazardous air toxics for communities living near HFC substitute production facilities.

Additionally, as mentioned in this section above, emissions from facilities producing fluorinated and non-fluorinated substitutes may also be affected by the phasedown of HFCs. For the forthcoming proposed 2024 Allocation Rule, EPA is updating the environmental justice analysis that was previously conducted for the Allocation Framework RIA to help determine how the implementation of the HFC phasedown may affect production and emissions at facilities that produce HFCs. EPA is following the analytical approach used in the Allocation Framework RIA to provide an update to the characterization of community demographics near HFC production facilities using updated data on the total

number of TRI facilities near HFC production facilities and the cancer and respiratory risks to surrounding communities. More information will be provided in conjunction with that proposed rule, which the Agency anticipates publishing later this year.

EPA seeks input on the environmental justice analysis contained in the RIA addendum for this proposed rule, as well as broader input on other health and environmental risks the Agency should assess. To support the development of comments, EPA is seeking data or analysis to identify whether it is reasonable to expect net increases in emissions and, if so, how we might isolate the impacts of this program (*i.e.,* effects resulting from the transition to lower-GWP substitutes or some other factor) in a manner that would enable the Agency to conduct a more nuanced analysis of changes in releases associated with chemical feedstocks and byproducts for HFC substitutes, given the inherent uncertainty regarding where, and in what quantities, substitutes will be produced.

EPA is also taking comment on whether there are other authorities that would allow for the reporting of emissions tied to HFC substitute production. This could complement the emissions reporting and/or monitoring requirements in the proposed 2024 HFC Allocation Rule for HFC production facilities. Emissions monitoring and/or reporting provides communities with greater transparency and allows EPA to better evaluate potential environmental justice impacts over time. For more discussion of that proposal, see 87 FR 66372 (November 3, 2022). Finally, EPA is seeking comment in order to aid our efforts to understand further cumulative impacts and how they might be addressed. Since the updated environmental justice analysis and proposed reporting requirement are focused on chemical stressors, the Agency is requesting additional information on how both the chemical and non-chemical stressors associated with the HFC phasedown can alter the cumulative impacts experienced by communities surrounding HFC production facilities, how the Agency can share this information with the public, and whether and how the Agency can assess and measure cumulative impacts in the context of the HFC phasedown.

IV. What factors will be considered for evaluating a petition?

In making a determination to grant or deny a petition, subsection (i)(4) of the AIM Act requires EPA to consider, to the extent practicable:

- The best available data;
- The availability of substitutes for use of the regulated substance that is the subject of the rulemaking or petition, as applicable, in a sector or subsector, taking into account technological achievability, commercial demands, affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import;
- Overall economic costs and environmental impacts, as compared to historical trends; and
- The remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3) of the AIM Act, if applicable.

These factors under subsection (i)(4) of the AIM Act were considered in the process of making a determination on the granted petitions, and will be the factors that EPA considers in evaluating future petitions. A discussion on how EPA interprets these factors and how they were considered in this proposed rulemaking is in section VII.E of the preamble.

V. What is the petition process under the technology transitions program?

Subsection (i)(3) of the AIM Act states that a person may petition EPA to promulgate a rule to restrict the use of a regulated substance in a sector or subsector in accordance with the Agency's authority to issue such a rule under subsection (i)(1) of the AIM Act. If EPA receives a petition under subsection (i)(3), the AIM Act states that ''[t]he Administrator shall grant or deny a petition . . . not later than 180 days after the date of receipt of the petition'' (42 U.S.C. 7675(i)(3)(B)) and make the petition available to the public no later than 30 days after receiving the petition (42 U.S.C. 7675(i)(3)(C)(iii)). For petitions that are denied, EPA must publish in the **Federal Register** an explanation of the denial (42 U.S.C. 7675(i)(3)(C)(i)). If EPA grants a petition, the statute requires EPA to promulgate a final rule not later than two years from the date the Agency grants the petition (42 U.S.C. 7675(i)(3)(C)(ii)).

This section describes the proposed process for submitting a petition under subsection (i) to the Agency, which includes direction on how technology transition provisions should be submitted to EPA; the necessary content of petitions; and how EPA will respond once petitions are received.

Subsection (i)(3)(A) of the AIM Act explicitly states that ''a person may petition the Administrator to promulgate a rule under [subsection (i)(1) of the AIM Act] for the restriction on use of a regulated substance in a sector or subsector, which shall include a request that the Administrator negotiate with stakeholders. . .''. EPA views ''person'' for the purpose of a technology transitions petition submittal as having the same meaning as how the term is defined in 40 CFR 84.3 (the definition established in the Allocation Framework Rule); that is, to mean ''any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.'' Using this definition in 40 CFR 84.3 for purposes of petition submittal under subsection (i) would ensure consistency of how this term is used across these two regulatory programs developed under the AIM Act. This definition of ''person'' also captures the Agency's intended meaning of this term for purposes of the technology transitions program. Therefore, any person who fits the Allocation Framework Rule definition may submit a technology transitions petition to EPA. We further note that the plain text of subsection (i)(3)(A) also limits this provision to requests for restrictions on the use of a regulated substance in a sector or subsector. Other types of requests—such as exemptions from existing or anticipated restrictions—are therefore not properly presented under the (i)(3)(A) petition process, although parties are always welcome to communicate to the Agency informally, to provide comments on a proposed rule that considers such restrictions on use, or to generally petition for rulemaking under the Administrative Procedures Act.

All the petitions considered in this rulemaking were submitted to EPA electronically. EPA is proposing to require future petitions to also be submitted electronically. The Agency's preferred method is for petitions to be submitted to the email address: *HFCpetitions@epa.gov.* A link to this address is available on EPA's web page at: *https://www.epa.gov/climate-hfcs-reduction/technology-transition-petitions-under-aim-act.* Petitions can also be submitted electronically through an EPA electronic reporting system. For instructions on how to submit a petition through an EPA electronic reporting system, please contact the individual

listed in the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

A. What is required to be included in a technology transitions petition?

EPA is proposing to require standard content to be included in a technology transitions petition, which would assist petitioners in preparing their petitions and also enhance EPA's ability to review and respond to them promptly. Under this proposal, in order to qualify for a grant, a technology transitions petition would need to include the elements described in the following paragraphs. We are seeking comment on these proposed elements of a petition submission under AIM Act subsection (i).

EPA is proposing that petitions must indicate either a GWP limit or the specific name(s) of the regulated substance(s) (including whether there are specific blend(s) that use the regulated substance(s), if the petition seeks a restriction on use of the regulated substance(s) in specific blends) to be restricted and their GWPs. Under this proposal, petitioners specifying specific regulated substances should use as the GWP the exchange values for the regulated HFCs listed in subsection (c) of the AIM Act and codified as appendix A to 40 CFR part 84.[31] For blends containing regulated substances, petitioners should identify all components of the blend using the composition-identifying designation as listed in American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 34–2019[32] (*e.g.,* HFC–134a, HFO–1234ze(E)). If blends are not listed in ASHRAE Standard 34, petitioners should provide the nominal composition of the blend, specifying all components with the ASHRAE Standard 34 designation for the components. If the components or substances are not listed in ASHRAE Standard 34, petitioners should provide the chemical name, the applicable CAS Registry Number, and the chemical formula and structure (*e.g.,* $CHF{=}C{=}CF_2$ rather than C_3F_3H) for the components not listed in ASHRAE Standard 34. EPA intends to maintain a list of commonly used blends containing HFCs and the GWPs of those blends at EPA's Technology Transitions web page. Nevertheless, EPA is also proposing a process to determine the GWP of blends containing regulated substances for purposes of this rulemaking, using the following hierarchy. For the regulated substances used in the blend, and as previously noted, the petitioner would use as the GWP the exchange value provided in subsection (c) of the AIM Act and codified as appendix A to 40 CFR part 84. EPA is proposing to use the 100-year GWP values from the IPCC's Fourth Assessment Report (AR4) for all substances or components of blends, which for HFC regulated substances is numerically equal to the exchange values provided in subsection (c), which are listed in AR4. EPA is proposing to use AR4 100-year GWPs wherever possible given the exchange values are numerically the same and because EPA considers such an approach to be less complicated. For hydrocarbons (HCs) listed in Table 2–15 of AR4, EPA is proposing to use the net GWP value. For substances for which no GWP is provided in AR4, EPA is proposing to use the 100-year GWP listed in World Meteorological Organization (WMO) 2018.[33] For any substance listed in neither of these sources, EPA is proposing to use the GWP of the substance in Table A–1 to 40 CFR part 98, as it exists on a specified date, such as the date this rule is published in the **Federal Register** as a final rule, if such substance is specifically listed in that table. EPA is aware of two potential substances that might be included as components of blends containing regulated substances that are not listed in these three sources, trans-dichloroethylene (HCO–1130(E)) and HCFO–1224yd(Z) and is proposing to set these GWPs to be five[34] and one,[35] respectively, for purposes of this rulemaking. For any other substance not listed in the above three source documents, EPA is proposing that the default GWPs as shown in Table A–1 to 40 CFR part 98, as it exists on a specified date, such as the date this rule is published in the **Federal Register** as a final rule, shall be used. In the event that the hierarchy outlined in this section does not provide a GWP (*i.e.,* the substance in question is not listed in the three documents, is not one of the two for which EPA is proposing GWPs, is not listed in Table A–1 to 40 CFR part 98 and does not fit within any of the default GWPs provided in Table A–1 to 40 CFR part 98), EPA is proposing to use a GWP of zero. In any case where a GWP value is preceded with a less than (<), very less than (<<), greater than (>), approximately (~), or similar symbol in the source document which is used to determine the GWP, EPA is proposing that the value shown shall be used. As such, petitioners should provide GWP values of the components of a blend based on the hierarchy proposed in this section. The GWP of a blend would then be calculated as the sum of the nominal composition (in mass proportions) of each component multiplied by the GWP of each component.

EPA is proposing that petitioners must indicate the sector or subsector for which restrictions on use of the regulated substance would apply. EPA is proposing definitions for ''sectors'' and ''subsectors'' in section VII.A of this preamble that generally reflect how these terms are historically used and EPA's understanding of sectors and subsectors where HFCs are currently or can be used. However, EPA is not limiting sectors or subsectors to a specific list, recognizing there may be additional uses of HFCs today or that may be developed in the future, and thus additional sectors or subsectors for which it could be appropriate to restrict use.

EPA is proposing that petitions must include a date that the requested restrictions would go into effect and information concerning why the date or dates is appropriate. Petitioners should recognize that subsection (i)(6) of the AIM Act restricts the effective date of rules promulgated under subsection (i) to no earlier than one year after the date of the final rule.

Before proposing a rule for the use of a regulated substance for a sector or subsector under subsection (i)(1), subsection (i)(2)(A) directs EPA to consider negotiating with stakeholders in accordance with the Negotiated Rulemaking Act of 1990 (*i.e.,* negotiated rulemaking procedure). Subsection (i)(3)(A) requires petitioners to ''include a request that the Administrator negotiate with stakeholders in accordance with paragraph (2)(A)'' (42 U.S.C. 7675(i)(3)(A)). Therefore, EPA is proposing that petitioners include such a request in their petition. However, we are seeking comment on whether, in the alternative, it is reasonable for EPA to interpret the petition process under subsection (i)(3) as requiring petitioners to *address* whether EPA use the negotiated rulemaking procedure, rather than requiring them to affirmatively request that the Agency pursue negotiated rulemaking. Most petitions received to date by the Agency complied with the statute's requirement to request that EPA use negotiated

[31] EPA noted in section III.A of this preamble that the exchange values for the regulated HFCs listed in subsection (c) of the AIM Act are numerically identical to the 100-year GWPs of each substance, as given in the Errata to Table 2.14 of the IPCC's Fourth Assessment Report (AR4) and Annexes A, C, and F of the Montreal Protocol. Available at: *https://www.ipcc.ch/site/assets/uploads/2018/05/ar4-wg1-errata.pdf.*

[32] Hereafter referred to as ASHRAE Standard 34.

[33] WMO, 2018.

[34] 81 FR 32244 (May 23, 2016).

[35] 84 FR 64766 (November 25, 2019).

rulemaking; however, those petitioners unanimously expressed a preference that EPA *not* use this procedure in promulgating its restrictions. Allowing petitioners to express their views as to whether EPA should engage in negotiated rulemaking for a subsection (i) rulemaking, as opposed to requiring them to request something they may disagree with, provides more value to EPA as we consider, per subsection (i)(2)(A), whether to use the negotiated rulemaking procedure before proposing a restriction under subsection (i). Otherwise, EPA could be misled as to the petitioners' views and could elect to use the negotiated rulemaking procedure when no stakeholder sought that outcome. The unwarranted use of time and resources to undergo that procedure could be counterproductive to meeting the statutory deadlines to complete a final rule. Regardless of whether we finalize a requirement that petitioners affirmatively request negotiated rulemaking or whether we finalize a requirement that petitioners address negotiated rulemaking, EPA proposes that petitioners must provide an explanation of their position on the use of the negotiated rulemaking procedure and any considerations that would either support use of a negotiated rulemaking process or disfavor it. If a petition is granted, EPA intends to consider the petitioner's statement on negotiated rulemaking as it determines whether to use the procedure.

Lastly, EPA is proposing to require petitioners to submit, to the extent practicable, information related to the ''Factors for Determination'' listed in subsection (i)(4) of the AIM Act to facilitate EPA's review of the petition.[36] Given the relatively short 180-day statutory timeframe for EPA to grant or deny a petition, this proposed requirement would ensure that information is available to EPA at the start of its review, to the extent the petitioner has relevant available information. This proposed requirement would clarify that EPA may deny a petition where no information had been provided that would allow the Agency to act on the petition.

Petitioners must, to the extent practicable, provide best available data on substitutes that could be used in lieu of the petitioned substance(s), addressing the subfactors (*e.g.,* technological achievability, safety, commercial demands, etc.) that may affect the availability of those substitutes. Other information submitted by petitioner could include estimates of the economic costs and environmental impacts. In particular, providing EPA with a sense of the scale of impacts (*e.g.,* whether the suggested restriction would have a significant environmental impact, or whether the suggested restriction would be likely to impose costs or savings on regulated entities or consumers) using quantitative, accurate data to support that assessment will be more likely to result in a timely, well-reasoned response to the petitioner's request.

[36] Section VII.E of this preamble provides information on EPA's interpretation of these factors for this proposed action.

B. What happens after a petition is submitted?

Subsection (i)(3)(C)(iii) instructs EPA to make petitions publicly available within 30 days after EPA receives the petition. As stated in another Agency action (see ''*Notice of Data Availability Relevant to Petition Submissions Under the American Innovation and Manufacturing Act of 2020,*'' 86 FR 28099 (May 25, 2021)), EPA intends to continue to post technology transitions petitions at *www.regulations.gov,* in Docket ID No. EPA–HQ–OAR–2021–0289, as well as on the Agency's website at *https://www.epa.gov/climate-hfcs-reduction/technology-transition-petitions-under-aim-act.* Making the petitions available allows the public to provide additional data and relevant material to aid in EPA's evaluation of petitions, based on the factors specified in subsection (i) of the AIM Act.

In accordance with the statutory directive, EPA intends to act on petitions no later than 180 days after the date of receipt of the petition. EPA notes that a petition granted under subsection (i) of the AIM Act does not necessarily mean the Agency will propose or finalize requirements identical to a petition's request. Rather, granting a petition means that the requested restriction contained in a granted petition warrants further consideration through rulemaking. During the rulemaking process, EPA will determine what restrictions on the use of HFCs to propose and finalize based on multiple considerations, including its consideration of the ''Factors for Determination'' listed in subsection (i)(4) to the extent practicable. This approach provides interested stakeholders with the opportunity to review and comment on a regulatory proposal restricting the use of HFCs prior to restrictions going into effect.

C. Can I revise or resubmit my petition?

As stated in section V.B of this preamble, receipt of a completed petition received by EPA triggers two statutory deadlines: the posting of the petition within 30 days of receipt and the granting or denying the of petition within 180 days of receipt. Because there is little purpose in EPA continuing to take action on the original petition when the petitioner has revised (*i.e.,* makes edits to an original request) or resubmitted (*i.e.,* makes edits to an original request and presents it as a new petition) it, EPA's view is that a petition revision or resubmittal made by petitioners is typically intended to supersede or replace the original petition and would thus restart these timelines. However, depending on the timing of the resubmission and the nature of the revision and the request, EPA may be able to act more quickly on a revised or resubmitted petition, for example, if the Agency had already developed familiarity with the request through its consideration of the original petition. Therefore, EPA intends to address petition revisions and resubmittals on a case-by-case basis. If petitioners do not intend for their submission to supersede or replace their original petition, rather revising or resubmitting their petition, they should instead submit supplemental or clarifying information regarding their petitions to the docket created for additional information and material related to petitions under consideration. In making a determination to grant or deny petitions, EPA plans to consider relevant and timely information provided in this docket, as the Agency did with the petitions in this rulemaking, including information provided by petitioners and from other stakeholders, for those petitions under review. Once a petition is granted or denied, any revised or resubmitted petitions will likely be treated as a new petition.

VI. How is EPA considering negotiated rulemaking?

In this section, EPA is providing a summary of the AIM Act's directive to consider negotiating with stakeholders prior to proposing a rule under subsection (i) of the Act. This section also provides information regarding how EPA intends to consider negotiating with stakeholders for future rulemakings, based on EPA's consideration to use negotiating rulemaking procedures prior to this proposal.

A. Summary of the AIM Act's Directive on Negotiated Rulemaking

Prior to proposing a rule, subsection (i)(2)(A) of the Act directs EPA to consider negotiating with stakeholders in the sector or subsector subject to the potential rule in accordance with

negotiated rulemaking procedures established under subchapter III of chapter 5 of title 5, United States Code (commonly known as the ''Negotiated Rulemaking Act of 1990''). If EPA makes a determination to use the negotiated rulemaking procedures, subsection (i)(2)(B) requires that EPA, to the extent practicable, give priority to completing that rulemaking over completing rulemakings under subsection (i) that are not using that procedure. For additional information on negotiated rulemaking procedures, see subchapter III of chapter 5 of title 5, United States Code. If EPA does not use the negotiated rulemaking process, subsection (i)(2)(C) requires the Agency to publish an explanation of the decision to not use that procedure before commencement of the rulemaking process.

B. How does EPA intend to consider negotiating with stakeholders under the AIM Act?

Prior to this proposed rulemaking, EPA issued a document informing the public of the Agency's consideration of using the negotiated rulemaking procedure and the Agency's decision to not use these procedures for this proposed rulemaking (86 FR 74080, December 29, 2021). The Agency found that using negotiated rulemakings was not in the best interest of the public in the document and thus decided not to use negotiated rulemaking. In making this decision, EPA considered information provided by the petitions, including statements made by petitioners on the use of negotiated rulemaking procedures, and information provided by other stakeholders on the petitions. Further, the Negotiated Rulemaking Act of 1990, 5 U.S.C. 563, provides seven criteria that the head of an agency should consider when determining whether a negotiated rulemaking is in the public interest. EPA believes these criteria are informative for purposes of making a determination under AIM Act subsection (i) of whether to use the procedures set out in the Negotiated Rulemaking Act for proposed rulemakings and, therefore, also considered these criteria in its decision.

Going forward, EPA intends to use a similar process in making its determination on whether to use negotiated rulemaking procedures for any rulemaking being considered under subsection (i) in response to granted petitions. This includes reviewing the petitions themselves and statements from petitioners on the use of negotiated rulemaking procedures, considering information provided by stakeholders commenting on petitions, and considering the seven criteria listed in the Negotiated Rulemaking Act of 1990, 5 U.S.C. 563, that the head of an agency should consider when determining whether a negotiated rulemaking is in the public's interest. For rulemakings initiated by EPA (*i.e.,* not in response to granted petitions), EPA anticipates that our review would focus on just these seven criteria.

Furthermore, where appropriate, EPA will also take into account recent Agency actions and decisions related to restrictions on the use of HFCs in sectors and subsectors for its consideration on using negotiated rulemaking procedures. For example, EPA received four petitions that were not included in the Agency's consideration of using negotiated rulemaking procedures for petitions granted on October 7, 2021.[37] However, these petitions requested restrictions on the use of HFCs in the same sectors and subsectors covered by petitions granted on October 7, 2021, for which EPA made a determination not to use negotiated rulemaking. Subsection (i)(2)(A) states that, ''[b]efore proposing a rule for a sector or subsector under paragraph (1), the Administrator shall consider negotiating with stakeholders in the sector or subsector subject to the potential rule. . .'' EPA will not issue a separate notice to consider using negotiated rulemaking for these four petitions because these petitions were received well ahead of this proposed action, and the requested restrictions are in the same sectors and subsectors contained in petitions granted on October 7, 2021, for which the Agency considered using negotiated rulemaking procedures and decided not to use them. Nothing in these four petitions caused EPA to reconsider that decision. Therefore, it is unnecessary for the Agency to reconsider whether to use negotiated rulemaking procedures for this rulemaking. EPA encourages future petitioners to consider petitions under review or recently granted before submitting a new petition and to consider submitting information to the docket for an existing petition in lieu of submitting a new petition on the same uses of HFCs that are already under consideration by the Agency.

[37] These petitions were received from AHRI and IIAR and are discussed in section VII.D.2 of this preamble. Copies of these petitions are located at *www.regulations.gov,* under Docket ID No. EPA–HQ–OAR–2021–0289, or at *https://www.epa.gov/climate-hfcs-reduction/technology-transition-petitions-under-aim-act.*

VII. What is EPA's proposed action concerning restrictions on the use of HFCs?

This section details the Agency's proposal for restricting HFCs in accordance with the granted petitions, including: defining terms that are new to 40 CFR part 84; presenting two approaches for the form that prohibitions could take; describing the proposed applicability of the prohibitions; providing EPA's interpretation and application of the ''Factors for Determination'' contained in subsection (i)(4) of the AIM Act; and listing the specific restrictions on the use of HFCs by sector and subsector.

A. What definitions is EPA proposing to implement subsection (i)?

The Allocation Framework Rule established regulatory definitions at 40 CFR part 84, subpart A to implement the framework and begin the regulatory phasedown of HFCs under the AIM Act. To maintain consistency, except as otherwise explained in this rulemaking, EPA intends to use terms in this rulemaking, and in the new subpart B which is to be established by this rule, as they were defined in the Allocation Framework Rule. Thus, for terms not defined in this subpart but that are defined in 40 CFR 84.3, the definitions in 40 CFR 84.3 shall apply. A few terms (export, exporter, and importer) currently exist in 40 CFR 84.3 in the context of bulk regulated substances. EPA is proposing subpart B definitions for those terms that would clarify how those terms apply to regulated substances that are used by or contained in products under subpart B. Other than that proposed change, these proposed definitions would mirror the text in the 40 CFR 84.3 definitions of export, exporter, and importer. As EPA explained in the Allocation Framework Rule, whether products using or containing HFCs are admitted into or exiting from a foreign-trade zone or other duty deferral program under U.S. Customs and Border Protection (CBP) regulations does not affect whether they are being imported or exported for purposes of part 84. *See* 86 FR 55133 (October 5, 2021) (discussing definitions of export and import under 40 CFR 84.3).

EPA is also proposing to establish definitions for new terms that are applicable only under 40 CFR part 84, subpart B and do not have a counterpart in the definitions under 40 CFR part 84, subpart A. These terms are: blend containing a regulated substance, manufacture, product, regulated product, retrofit, sector, subsector,

substitute, and use. The definitions that EPA is proposing to include in 84.52 for application to 40 CFR part 84, subpart B are as follows:

Blend containing a regulated substance. EPA is proposing to establish restrictions on the use of HFCs, whether neat or used in a blend. Blends containing a regulated substance are used in multiple sectors and subsectors including refrigeration, air conditioning and heat pump, foam blowing, and fire suppression. EPA is proposing to define this term as ''any mixture that contains one or more regulated substances used in a sector or subsector.'' EPA would consider any quantity of a regulated substance within a mixture to qualify the mixture as a ''blend containing a regulated substance.''

EPA is not proposing that a blend that uses one or more regulated substances is itself a regulated substance. Rather, the Agency is proposing use restrictions on the regulated substance(s) used in certain blends, such that the use restriction on the regulated substance(s) would also affect use of that blend. Most HFCs used in the sectors and subsectors addressed by this proposed rule are components of blends that contain other HFCs, HFOs, and hydrocarbons. As discussed in section V.A of this preamble, where the proportion of a regulated substance multiplied by its GWP, along with the proportion of the other components multiplied by their respective GWPs, causes the blend to exceed the GWP limit, the use of that HFC in that blend would be prohibited.

Export. For purposes of subpart B, EPA is proposing to define this term to mean the transport of a regulated product from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for onboard use.

Exporter. For purposes of subpart B, EPA is proposing to define this term to mean the person who contracts to sell any regulated product for export or transfers a regulated product to an affiliate in another country.

Importer. For purposes of subpart B, EPA is proposing to define this term to mean any person who imports any regulated product into the United States. Importer includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to withdraw merchandise from a bonded warehouse has been transferred.

This proposed definition of importer, specifically paragraphs (3) and (4), would more closely align with the definition of ''importer'' at 19 CFR 101.1. Though the definition would vary in non-substantive ways from that in subpart A of 40 CFR part 84, no difference in interpretation between subparts is intended.

Manufacture. EPA is proposing to define this term as to complete a product's manufacturing and assembly processes such that it is ready for initial sale, distribution, or operation. For equipment that is assembled and charged in the field, manufacture means to complete the circuit holding the regulated substance, charge with a full charge, and otherwise make functional for use for its intended purpose.

This proposed definition is intended to apply similarly to how this term is applied in certain other use restrictions under title VI of the CAA and 40 CFR part 82. Because those restrictions bear certain similarities to restrictions proposed in this document, EPA is drawing on its past experience in implementing those provisions in this proposal, including for the definition of ''manufacture.'' EPA established restrictions on products, including appliances, foams, and aerosols under section 610 of the CAA (Nonessential Products Bans). EPA also established use prohibitions under section 605(a) of the CAA that addressed the use of certain ODS as a refrigerant in the manufacture of new appliances, including field charged appliances. *See e.g.,* 40 CFR 82.15(g)(4)(i), 40 CFR 82.15(g)(5)(i); *see also* 85 FR 15267 (March 17, 2020) (describing the use restriction and when a field charged appliance is manufactured). The proposed definition of manufacture in this rulemaking is intended to address both products that are manufactured at a factory, including factory-charged appliances, and the assembly of field charged appliances. It is also intended to address field-charged equipment beyond appliances in the RACHP sector to include fire suppression equipment or other equipment that is assembled and charged on-site.

Appliances used in commercial refrigeration, such as large chillers and industrial process refrigeration (IPR), typically involve more complex installation processes, which may require custom built parts, and typically are manufactured on-site (or field charged). Consistent with EPA's view of the term ''manufacture'' in its prior experience under title VI of the CAA and its implementing regulations, appliances such as these that are field charged or have the refrigerant circuit completed on-site are manufactured at the point when installation of all the components and other parts are completed, and the appliance is fully charged with refrigerant and able to operate (*see, e.g.,* 85 FR 15267, (March 17, 2020)).

EPA is seeking comment on whether it should expand the definition for ''manufacture'' to include the manufacturing process, prior to the completion of the product containing or manufactured with a regulated substance or blend using a regulated substance.

Product. EPA is proposing to define this term as ''an item or category of items manufactured from raw or recycled materials which is used to perform a function or task. The term product includes, but is not limited to: equipment, appliances, components, subcomponents, foams, foam blowing systems (*e.g.,* pre-blended polyols), fire suppression systems or devices, aerosols, pressurized dispensers, and wipes.'' This definition is based on the definition of the term ''product'' in regulations established under title VI of the CAA in 40 CFR part 82 subparts C and E. EPA's view of what constitutes a product for purposes of use restrictions under subsection (i) mirrors its view under those provisions. Maintaining the same definition will provide clarity for the regulated community, as many are already familiar with the existing definitions in part 82. One difference from the part 82 definition is the proposed addition of two examples: fire suppression systems and foam blowing systems. There had been confusion during the ODS phaseout whether these systems were a product or a bulk substance. For example, some aircraft lavatory fire suppression systems consist of trash containers equipped with a fire extinguisher, a discrete product that automatically discharges the extinguishant in the event of a fire, whereas more integrated fire suppression systems use a reservoir of gas in a detachable cylinder and piping to discharge into the protected space. EPA is proposing to clarify that the self-contained systems would be considered products, while system cylinders independent of the system would continue to be considered bulk. Polyol foam blowing systems consist of two cylinders, one of which contains the foam material and the other containing a blowing agent such as an HFC. The cylinder containing an HFC is not considered a bulk gas as the two are sold together and used as a single system.

Regulated product. EPA is proposing to define this term as ''any product in the sectors or subsectors identified in § 84.56 that contains or was manufactured with a regulated substance or a blend that contains a regulated substance, including products intended to be used with a regulated substance, or that is otherwise subject to the prohibitions of this subpart.'' EPA intends for this definition to broadly cover all products that use HFCs, whether they are high-GWP HFCs that are prohibited or lower-GWP HFCs that are subject to labeling and reporting provisions.

Retrofit. The AIM Act defines ''retrofit'' as ''to upgrade existing equipment where the regulated substance is changed, which—(i) includes the conversion of equipment to achieve system compatibility; and (ii) may include changes in lubricants, gaskets, filters, driers, valves, o-rings, or equipment components for that purpose.'' EPA is proposing to adopt the definition contained in subsection (i)(7)(A) of the AIM Act with the addition of examples of equipment. The definition in the AIM Act is similar to, but broader than EPA's definition of retrofit that was codified in 40 CFR part 82, subpart F. The AIM Act definition refers to ''regulated substance'' and ''equipment'' whereas the regulatory definition in Part 82 refers to ''refrigerant'' and ''appliances.'' As such, in this context, EPA finds it reasonable to interpret this term as applying not just to refrigeration and air-conditioning appliances, but all equipment that uses a regulated substance. EPA is proposing to add a non-inclusive list of examples—such as air conditioning and refrigeration, fire suppression, and foam blowing equipment—recognizing that petitioners may seek, or EPA may establish, restrictions on other types of equipment using HFCs in the future.

Sector. EPA is proposing to define this term as ''a broad category of applications including but not limited to: refrigeration, air conditioning and heat pumps; foam blowing; aerosols; chemical manufacturing; cleaning solvents; fire suppression and explosion protection; and semiconductor manufacturing.'' These categorizations and groupings would be similar to how the term ''sector'' is used in other contexts, such as EPA's Significant New Alternatives Policy (SNAP) Program, the Montreal Protocol Parties' Technology and Economic Assessment Panel (TEAP), the statutory language, and EPA's Vintaging Model. Entities potentially subject to rulemakings proposed under subsection (i) of the AIM Act are often the same entities affected by CAA title VI, including the CAA section 612 SNAP program, and may be familiar with the way EPA traditionally categorizes and groups sectors in that context. Moreover, TEAP is a globally recognized advisory body to the Montreal Protocol Parties, which provides technical information related to alternative technologies that use HFCs in sectors and subsectors. Entities with a global market presence and other stakeholders may be familiar with how TEAP defines sectors, and EPA's proposed definition of sector would be relatable to their understanding of the term.

Subsector. EPA is proposing to define this term as ''processes, classes of applications, or specific uses that are related to one another within a single sector or subsector.'' Where appropriate, each sector can be subdivided into different subsectors which more narrowly highlights how the HFC is used. Entities potentially subject to rulemakings proposed under subsection (i) of the AIM Act are often the same entities affected by CAA title VI, including the CAA section 612 SNAP program and may be familiar with the way EPA categorizes and groups sectors and subsectors, in that context. Therefore, EPA is proposing that the term ''subsectors'' include the concepts of ''end-uses'' and ''applications'' under the SNAP Program (40 CFR 82.172). An example subsector is cold storage warehouses under the refrigeration, air conditioning and heat pump sector. Another example is the integral skin polyurethane subsector under foams.

Substitute. EPA is proposing to define this term as ''any substance, product, or alternative manufacturing process, whether existing or new, that is used, or intended for use, in a sector or subsector with a lower global warming potential than the regulated substance, whether neat or used in a blend, to which a use restriction would apply.'' Under this proposed definition, substitutes would include regulated substances (*e.g.,* HFC–32 used in lieu of R–410A in commercial unitary AC), blends containing regulated substances (*e.g.,* R–454B used in lieu of R–410A in residential unitary AC), blends that do not use a regulated substance (*e.g.,* R–441A used in lieu of R–410A in window ACs), alternative substances (*e.g.,* HFOs, hydrocarbons, R–717, and R–744 (CO_2)), and not-in-kind technologies (*e.g.,* finger-pump bottles in lieu of aerosol cans, or vacuum panels in lieu of foam insulation).

Use. EPA is proposing to define this term as ''for any person to take any action with or to a regulated substance, regardless of whether the regulated substance is in bulk, contained within a product, or otherwise, except for the destruction of a regulated substance. Actions include, but are not limited to, the utilization, deployment, sale, distribution, discharge, incorporation, transformation, or other manipulation.''

EPA welcomes comment on these proposed definitions. EPA acknowledges that historical contexts may not fully capture all the ways that regulated substances are being used and is seeking comment on additional sectors and subsectors where regulated substances are used that would fit under this regulatory program.

B. How is EPA proposing to restrict the use of HFCs in the sector or subsector in which the HFCs are used?

Subsection (i) authorizes EPA to by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. The provision grants EPA authority to fashion restrictions on the use of regulated substances in the sectors that use those substances and does not specify a particular approach as to how restrictions must be structured but lists a number of considerations EPA is to factor in, to the extent practicable, when promulgating restrictions. EPA is considering two possible approaches to structuring those restrictions in this proposal but recognizes that other approaches could be considered in the future that would also fit within the authority granted by this statutory provision.

In considering the two approaches, we have taken into account the statutory text, feasibility, consistency with similar programs being implemented in the states and internationally, impacts on the regulated community and on innovation, efficiency of implementation, and other factors. Subsection (i)(4)'s ''Factors for Determination'' provides factors that EPA is to consider ''[i]n carrying out a rulemaking'' under subsection (i)(1). As a general matter, we interpret subsection (i)(1) to apply where EPA is deciding *whether* to impose a restriction on the use of a regulated substance in a sector or subsector and *what* that restriction should be (*e.g.,* a full restriction or a partial restriction and on what timeframe). However, we also think the factors listed in subsection (i)(4) are informative in our consideration of how to structure restrictions, as some approaches may provide advantages with respect to some of the factors listed in subsection (i)(4) over others.

We also note that while subsection (i)(1) identifies that EPA may restrict the use of a regulated substance ''in the sector or subsector in which the regulated substance is used,'' we think that, given EPA's authority to issue partial restrictions, the provision allows EPA to establish restrictions for particular uses of HFCs, such as products or applications, and that such restrictions do not need to apply uniformly across entire sectors or subsectors. Interpreting EPA's authority in this manner allows the Agency to tailor restrictions in accordance with the best available data and to consider relevant differences in, for example, the availability of substitutes with respect to technological achievability or affordability. For example, EPA is proposing restrictions for HFCs used in chillers for comfort cooling. However, chillers for comfort cooling with evaporating temperatures less than −58 °F are not included in this proposal due to limits in lower-GWP technology to meet the proposed restriction at this time.

The two approaches to structuring subsection (i) restrictions that we are considering at this time were identified in the subsection (i) petitions granted by the Agency to date. They are: (1) to set GWP limits for HFCs used within a sector or one or more subsectors; and (2) to restrict specific HFCs, whether neat or used in a blend, by sector or one or more subsectors.[38] For purposes of the restrictions proposed in this document, which largely respond to the subsection (i) petitions granted to date by the Administrator, we propose to primarily employ the GWP limit approach, with some exceptions where we think the specific-listing approach is more appropriate. We seek comment on both approaches and have provided sufficient information in this proposal and the docket to allow the Agency to finalize restrictions using either approach.[39]

GWP Limit Approach

This proposed approach would restrict the use of HFCs by establishing GWP limits for HFCs used in each sector or subsector, whether neat or used in a blend. By establishing GWP limits, only HFCs with GWPs below the proposed limit or HFCs used in blends with GWPs below the proposed limit for a particular sector or subsector could be used in that sector or subsector. If used neat, HFCs with GWPs at or above the GWP limit would be prohibited from use in that sector or subsector. If the HFC is used in a blend in the sector or subsector, compliance with the GWP limit would be determined based on the GWP of the blend. Blends containing an HFC with GWPs at or above the GWP limit would be prohibited from use in that sector or subsector.

For HFCs used in a blend, EPA is proposing that the GWP of the blend would be calculated to incorporate all components of the blend, whether an HFC, HFO, HC or other constituent, using the 100-year integrated AR4 values. We note that the 100-year integrated GWP values in Table 2.15 of AR4 for the HFCs are equivalent to the exchange values listed in the AIM Act and thus what we plan to use here without change. For further details about determining the GWP of compounds that are not listed in AR4, see section V.A of this preamble.

In most cases it is the specific HFC and the proportion of that HFC within the blend that determines the GWP of the blend as a whole. Under this proposal, EPA is not restricting the use of all HFC blends. For instance, if a GWP limit of 150 is established for regulated substances used in a particular sector or subsector, HFC–134a, which has a GWP of 1,430, could not be used. However, R–451A, which is a blend of HFC–134a and HFO–1234yf, has a GWP of 146 and could be used in a sector or subsector with a GWP limit of 150. This approach would allow for the continued use of an HFC with a GWP above the limit EPA establishes when it is used in a blend with a GWP below the limit. There may be certain characteristics associated with a higher-GWP HFC that makes use of that substance in a blend particularly advantageous, such as reducing flammability. Making available substitutes that would not otherwise be available under an approach that did not permit the use of higher-GWP HFCs, even when in a lower-GWP blend, would achieve beneficial environmental impacts sooner, smooth the transition, and support innovation. This approach is consistent with the approach used by other governments including the European Union (EU). EPA notes that this approach would not change in any way the calculation established under 40 CFR part 84, subpart A for determining the quantity of production and consumption allowances required for regulated substances used in blends.

Even where petitions have asked EPA to restrict specific regulated substances or blends containing an HFC in various sectors and subsectors, EPA can translate those requests into restrictions using the GWP limit approach. EPA would select GWP limits that would, in effect, prohibit the use of named HFCs (neat) and named blends in the specified sector. For example, in its granted petition, Natural Resources Defense Council et. al. (NRDC) requested that the Agency restrict the use of R–507A (GWP 3,990), R–404A (GWP 3,920), R–428A (GWP 3,610), R–422C (GWP 3,390), R–434A (GWP 3,250), HFC–227ea (GWP 3,220), R–421B (GWP 3,190), R–422A (GWP 3,140), R–407B (GWP 2,800), and R–422D (GWP 2,730) for new remote condensing units. In this example, EPA's starting point for considering a GWP limit for new remote condensing units would be 2,730, to include within the prohibition the blend with the lowest GWP among those in the petition. EPA then would use the considerations laid out in subsection (i)(4) to determine the appropriate GWP limit restriction that would also account for available substitutes in the remote condensing unit subsector; by definition, that proposed GWP limit would prohibit (or fully restrict) the specific named HFCs and blends containing HFCs requested by the petitioner.

One benefit of the GWP limit approach is that the regulatory certainty it would provide would encourage the continued development and implementation of HFC substitutes with lower GWPs. Under this approach, companies would be free to innovate so long as the substitute did not exceed the GWP limit. Where EPA has established a GWP limit for a particular sector or subsector, based on available and technologically achievable substitutes, new HFCs or blends containing an HFC used in that sector or subsector would need to meet that threshold. This approach would also provide a more efficient and streamlined process for companies to employ these lower-GWP substitutes for new uses, because the existing restrictions would make clear permissible uses. A substance-specific listing approach could create hesitancy to innovate because it would be less clear whether EPA might restrict a particular blend containing an HFC *after* a company had already invested resources in developing it for a particular use. By establishing GWP limits, this program would foster

[38] The restrictions on the use of an HFC under subsection (i) of the AIM Act proposed in this rulemaking are intended to complement and not conflict with existing restrictions established through other authorities. Other authorities would still apply.

[39] EPA provides a summary of sectors and subsectors affected by the proposed action, along with the proposed restriction in the form of GWP limits for most subsectors in section VII.F.2 of this preamble. The docket contains a list of specific substances that EPA is proposing to restrict should EPA finalize a specific listing approach to establish use restrictions rather than a GWP limit approach.

innovation to next-generation substitutes.

Perhaps recognizing these same advantages, other governments undertaking programs to restrict HFCs have embraced this approach, including the state of California, Canada, and EU member countries. Many of the granted petitions including those submitted by environmental advocates, industry trade associations, and state governments, demonstrated broad support for using GWP limits. Furthermore, many of the businesses in the potentially affected sectors or subsectors are familiar with this approach already and may already comply with GWP limits in certain markets. Therefore, EPA's use of the GWP limit approach, which is familiar to companies operating in other jurisdictions, could potentially support innovation, transition, and compliance.

Specific Listing Approach

The second approach EPA is considering would be to list specifically restricted HFCs and blends containing HFCs by sector or subsector. Using the NRDC petition example described previously, under this approach EPA would prohibit the use of the ten blends contained in the petition (R–507A, R–404A, R–428A, R–422C, R–434A, HFC–227ea, R–421B, R–422A, R–407B, and R–422D) in new remote condensing units. The NRDC petition appears to be based on the SNAP Program's use of acceptable, acceptable subject to use conditions, and unacceptable lists and requests restrictions that would be equivalent to the changes of status in SNAP Rules 20 and 21 which were partially vacated and remanded to the Agency (80 FR 42870, July 20, 2015 and 81 FR 86778, December 1, 2016, respectively).[40]

While EPA's experience implementing the SNAP program under section 612 of the CAA provides some insight into the advisability of using a substance specific listing approach to structure restrictions under subsection (i), EPA recognizes that Congress provided separate authority under subsection (i) of the AIM Act. Section 612(c) of the CAA requires EPA to promulgate rules making it unlawful to replace ODS with any substitute that it determines may present adverse effects to human health or the environment where it has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available. Section 612(c) further requires EPA to "publish a list of (A) the substitutes prohibited under this subsection for specific uses and (B) the safe alternatives identified under this subsection for particular specific uses." Under SNAP, EPA evaluates substances that can be used as alternatives based on a number of criteria and accordingly lists them as acceptable, unacceptable, acceptable subject to use conditions, acceptable subject to narrowed use limits, or pending. See 40 CFR 82.180(a)(7) (listing criteria for review) and 40 CFR 82.180(b) (describing types of listing decisions). EPA has considered more than 450 alternatives for eight industry sectors and more than 40 end-uses since 1994.[41]

Based on EPA's experience with using the substance-specific lists to establish use conditions or narrowed use limits under SNAP, we anticipate that using substance-specific lists to communicate the restrictions established under subsection (i) could be unwieldy and less advantageous. We note that in contrast to section 612(c) of the CAA, subsection (i)(1) does not expressly mention publication of a list for substances that are restricted. Moreover, the substance-specific approach could present the challenge of needing to continually update the list of HFCs and blends containing an HFC as they are introduced. For example, if EPA has already restricted one particular use of an HFC in a blend for a given use, a company could reformulate the blend slightly, even *increasing* the high-GWP HFC component, and start using it for that same use. EPA would then need to initiate a rulemaking to restrict that new HFC formulation for that use, even though it was clear from the outset that lower-GWP alternatives already existed.

However, we acknowledge that the substance-specific listing approach may be simpler to implement in some instances, particularly when there are only one or a few regulated substances used or restricted in a specific sector or subsector. Listing these restricted substances explicitly would provide specificity to the regulated community as to exactly what is prohibited. It also allows anyone to compare the regulated substance used to the list of restricted substances and know whether the product is in compliance, avoiding the intermediate step of determining the GWP of the HFC or blend containing an HFC before knowing whether that particular substance meets the established limit.

This approach may also be preferable when substitutes continue to be in development. It may be beneficial to allow additional time before establishing a GWP limit while still restricting those substances that have the highest environmental impact. This approach would allow for the adoption of multiple transitional substitutes and allow for the development of additional substitutes.

We think both approaches could also be used in combination, with some subsectors having a GWP limit and others where specific substances are restricted. We note that petitions granted under subsection (i) requested restrictions using both of these approaches, and one possible approach for the final rule would be to establish, if appropriate, the type of restriction (GWP limit or substance-specific) requested in the petitions for that particular subsector. For example, most petitions regarding the RACHP subsectors requested GWP limit restrictions. EPA suspects that this may be due to the number of HFCs and blends containing an HFC used in those subsectors. However, in some cases not all petitioners were in agreement on the structure of the restriction. For example, some petitions regarding the cold storage warehouse subsector requested that EPA establish a GWP limit of 150 while others requested EPA to prohibit the use of listed HFCs and blends containing an HFC.

The Agency is proposing to establish restrictions on the use of HFCs by establishing GWP limits by sector or subsector in most instances. As discussed further in section VII.F.3.e of this preamble, EPA is proposing to restrict specific HFCs, whether neat or used in a blend, in some instances where the situation making the substance specific listing approach is advantageous. EPA is seeking comment on the GWP limit approach, the specific listing approach, other possible regulatory models that the Agency should consider, and a combination of approaches either for this proposed rule or for future rulemakings under subsection (i) of the AIM Act.

C. Applicability

The AIM Act provides that the Administrator may by rule restrict,

[40] After a court challenge, the D.C. Circuit partially vacated the SNAP 2015 Rule "to the extent it requires manufacturers to replace HFCs with a substitute substance," and remanded to EPA for further proceedings. *Mexichem Fluor, Inc.* v. *EPA,* 866 F.3d 451, 464 (D.C. Cir. 2017) ("*Mexichem I*"). However, the court upheld EPA's decisions in that rule to change the listings for certain HFCs in certain SNAP end-uses from acceptable to unacceptable as being reasonable and not arbitrary and capricious. *Id.* at 462–64. The same court later issued a similar partial vacatur for portions of the SNAP 2016 Rule. *See Mexichem Fluor, Inc.* v. *EPA,* 760 Fed. Appx. 6 (Mem) (per curiam) (D.C. Cir. 2019) ("*Mexichem II*").

[41] As noted in section VII.A of this preamble, there is significant overlap between the sectors and subsectors identified in this proposal and how sectors and "end-uses" are categorized under the SNAP program.

fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. HFCs are used in a wide variety of applications, including refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. In these applications, HFCs are often used as a refrigerant, foam blowing agent, and fire suppression agent or may be contained and used within a product. HFCs can also be used in processes such as solvent cleaning, blowing open cell foam, semiconductor manufacturing, or chemical usage.

The AIM Act does not define ''use.'' The dictionary definitions for that term include ''to put into action or service'' [42] and ''to take, hold, or deploy (something) as a means of accomplishing a purpose or achieving a result; employ.'' [43] For several reasons, we think ''use,'' in the context of subsection (i)(1), was intended to include actions taken with respect to regulated substances that occur at the market or industry level, such as manufacture, distribution, sale, offer for sale—*i.e.,* to cover the presence of HFCs in products and processes in the U.S. market as a way of addressing their use in sectors and subsectors.

First, subsection (i) grants EPA authority to restrict the use of a regulated substance ''in the sector or subsector in which the regulated substance is used.'' While sectors and subsectors are not defined in the AIM Act, those terms suggest groupings or categories of related activity at an industry level, and as discussed in section VII.A of this preamble, EPA is proposing definitions for ''sectors'' and ''subsectors'' that are consistent with historical usage of those terms in other programs—grouping together similar or related industrial or market uses in distinct sectors, for example, refrigeration and air conditioning, or foam blowing, or aerosols. ''Use of a regulated substance in the sector or subsector in which the regulated substance is used'' indicates that the grant of authority under subsection (i) was intended to cover a *sector or subsector's use* of a regulated substance, and that use certainly covers the inclusion of a regulated substance in a product [44] to achieve a particular purpose or the employment of a regulated substance in a process, as those are prototypical uses for sectors that are most likely to be using regulated substances, such as the inclusion of an HFC as a refrigerant in a refrigerator or air conditioner for cooling purposes.

Second, because subsection (i) and the subsection (i)(4) factors are focused on broad, sector-level information, it is reasonable to interpret ''use'' broadly, in a way that would reach uses on a sector-level basis. The subsection is titled ''Technology Transitions,'' and in subsection (i)(4), the Act directs EPA to consider certain factors, to the extent practicable, in issuing a rulemaking or making a determination to grant or deny a petition regarding use restrictions. The factors listed under subsection (i)(4) task the Agency with examining information relevant to industry-level sectors or subsectors that would inform consideration of the feasibility and advisability of a transition away from the use of a regulated substance in that sector or subsector, as well as consideration of whether that transition should be full, partial, or on a graduated schedule. For example, in subsection (i)(4)(B), the Act directs EPA to factor in ''the availability of substitutes for use of the regulated substance that is the subject of the rulemaking or petition, as applicable, in a sector or subsector, taking into account technological achievability, commercial demands, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including quantities of regulated substances available from reclaiming, prior production, or prior import.'' The various subfactors in (i)(4)(B) help EPA to determine whether there are adequate available substitutes for a regulated substance that a sector or subsector could use, indicating feasibility, readiness, advisability, and degree of a sector or subsector transition away from the regulated substances in use. Similarly, the other factors in (i)(4)—to use best available data, to consider overall economic costs and environmental impacts, as compared to historical trends, and to consider the remaining phasedown period for regulated substances under the phasedown rule issued under subsection (e), if applicable—also fit with this understanding of EPA's task: to determine whether, when, and to what degree it is appropriate to establish a use restriction to facilitate the transition away from the use of regulated substances in a sector or subsector.

Third, Congress provided EPA authority to issue restrictions that are full, partial, or on a graduated schedule. Fully restricting the use of a regulated substance in the sector or subsector in which it is used, by its terms, implies a full transition away from the use of that regulated substance in the given sector or subsector. We therefore understand the term ''use'' to be broad enough to achieve a full transition. In order to effectuate a full transition, we would have to be able to address all the aspects where the regulated substance is present in that sector or subsector of the market. There may be situations where a restriction is best targeted at points in the life cycle or market chain of the regulated substance that are subsequent to the incorporation of the regulated substance in a product or process, as well as points in the chain that are proximate to ultimate use. Thus, we interpret the term ''use'' as being broad enough to reach points such as transport or offer for sale.

EPA therefore proposes to interpret use of a regulated substance in the sector or subsector for purposes of subsection (i) as ''for any person to take any action with or to a regulated substance, regardless of whether the regulated substance is in bulk, contained within a product, or otherwise, except for the destruction of a regulated substance. Actions include, but are not limited to, the utilization, deployment, sale, distribution, discharge, incorporation, transformation, or other manipulation.'' EPA's proposed definition of ''use'' covers all of the links on the chain representing how regulated substances would be introduced, incorporated into products or processes, circulated, and made available in the U.S. market. To the extent EPA has determined, considering the (i)(4) factors, such as the availability of substitutes, that it is appropriate and possible to fully restrict the use of an HFC in a particular sector or subsector, we think that restriction must be able to extend across all the points in the chain. For example, if stakeholders submit a petition to EPA asserting that the Agency should fully restrict use of a certain HFC or HFCs over a certain GWP in motor vehicle air conditioning (MVAC), and EPA agrees such restriction is appropriate, based on consideration of the (i)(4) factors to the extent practicable, we interpret subsection (i) to authorize the restriction of such use of HFCs in every part of the market chain. A narrower interpretation could hamper EPA's ability to

[42] Merriam-Webster. Available at: *https://www.merriam-webster.com/dictionary/use.*

[43] *Lexico.com.* Available at: *https://www.lexico.com/en/definition/use.*

[44] Similarly, subsection (i)'s authority extends to regulated substances contained in a blend and the use of that regulated substance within a blend by the sector or subsector in a product or process to achieve a particular purpose. In order to address the regulated substance within a blend, it may be appropriate to establish requirements that apply to use of the blend, although the blend itself is not a regulated substance.

effectively implement a full restriction on HFC use in a sector or subsector. For example, if EPA were to define ''use'' as only the manufacture of a product containing an HFC but not sale of that product, then the manufacture of a MVAC system with the restricted HFC would be prohibited, because the air conditioning sector would be restricted from that ''use'' of the HFC. Sale of MVAC systems manufactured with the restricted HFC would not be considered part of the sector's ''use'' of an HFC and would therefore be permissible, either because the unit had been imported or because it had made it to store shelves, despite a restriction on its manufacture. This would circumvent the intended full transition of the MVAC subsector away from use of HFC. Covering all points in the chain of ''use in the sector or subsector'' ensures that the use restrictions we establish achieve their intended purpose. However, even though EPA's proposed definition of ''use'' is broad in order to facilitate a full transition to HFC substitutes where appropriate, that does not mean that in every instance the restrictions promulgated under subsection (i) will exercise that full authority. In many cases, including in this proposed action, EPA may issue partial restrictions that target only certain uses.

The AIM Act also provides EPA other authorities to issue certain regulations for the purpose of maximizing reclamation and minimizing release of regulated substances from equipment and to ensure the safety of technicians and consumers.[45] We have not yet established regulations under those provisions and therefore do not intend to apply our authority under (i) to actions associated with steps in the disposal or reclamation chain such as recovery, recycling, and reclamation of a regulated substance at this point.

We also do not intend that this rule apply to the ordinary utilization or operation of a regulated product by an ultimate consumer. Given that this is the outset of the phasedown of HFCs, there is an opportunity to efficiently achieve significant emission reductions by limiting the introduction of new products to the U.S. market and restricting the circulation of those products (*e.g.,* sale and distribution) before they reach the ultimate consumer. We therefore are proposing restrictions on the manufacture, import, export, sale, and distribution of products, rather than on restricting ongoing, ordinary operation and utilization by ultimate consumers.[46]

Further, in this rule, EPA is not proposing to apply the requirements established through this rulemaking to certain applications of HFCs eligible for application-specific allowances under 40 CFR 84.13. Under subsection (i)(7)(B)(i) of the AIM Act, a rule promulgated under subsection (i) ''shall not apply to . . . an essential use under clause (i) or (iv) of subsection (e)(4)(B)'' of the AIM Act, ''including any use for which the production or consumption of the regulated substance is extended under clause (v)(II) of that subsection'' of the Act. Subsection (e)(4)(B)(iv) lists six applications which are to ''receive the full quantity of allowances necessary, based on projected, current, and historical trends'' for the five-year period after enactment of the AIM Act. EPA has codified these six applications at 40 CFR 84.13 and established a framework for allocation of allowances for these application-specific needs. Under the implementing regulations at 40 CFR 84.13, the following applications are currently eligible to receive application-specific allowances for calendar years through 2025: (1) as a propellant in metered dose inhalers; (2) in the manufacture of defense sprays; (3) in the manufacture of structural composite preformed polyurethane foam for marine use and trailer use; (4) in the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector; (5) for mission-critical military end uses; and (6) for onboard aerospace fire suppression. Therefore, EPA is not proposing to apply the requirements under this rulemaking to these uses of HFCs in these six specific applications at this time, since they are currently receiving application-specific allowances under 40 CFR 84.13. This aspect of the proposal is reflected in the proposed exemption in section 84.58. Further, EPA has not at this point designated any essential uses under subsection (e)(4)(B)(i). If EPA makes such a designation in the future, EPA would consider at that point how to ensure consistency with subsection (i)(7)(B)(i).

1. Which uses is EPA proposing to restrict in this proposal?

Under the proposed definition of ''use'' EPA would be exercising its authority under subsection (i) to cover a broad chain of activities associated with regulated products. In this rule, EPA's proposed restrictions on that broad chain of activities are designed to apply only at certain points in this chain, consistent with the direction that EPA ''may by rule restrict, fully, partially, or on a graduated schedule.'' With respect to the specific sector and subsector restrictions proposed in this document, EPA proposes to adopt a uniform understanding of when the restrictions would begin to apply and explains in this section how the commencement of EPA's restrictions would apply to both regulated products manufactured in the United States and imported regulated products.

For purposes of this rule, EPA is proposing restrictions on newly manufactured products (and the subsequent sale, distribution, export, and offer for sale or distribution of those products) and is not proposing to apply the specific use restrictions that are the subject of this action to existing products or equipment and used products or equipment, except as to the import of existing or used products or equipment. For additional discussion regarding products for export, see section VII.C.2 of this preamble. For additional discussion regarding existing products or equipment, see section VII.C.3 of this preamble.

We think the most efficient and effective way to encourage transition from the use of these HFCs is to restrict the incorporation of HFCs into products entering the U.S. market for the first time. This restriction would primarily be borne by original equipment manufacturers (OEMs) and importers of products, as these are the entities that introduce products into the U.S. market. Given that this is the first rulemaking under subsection (i), and there are many products that are currently being manufactured or imported using HFCs and blends containing HFCs (or are intended to use HFCs and blends containing HFCs) in the sectors and subsectors for which EPA is proposing restrictions, the use restrictions in this proposed rule are intended to only apply to the manufacture and import of regulated products and the subsequent sale, distribution, export, and offer for sale or distribution of those products.

[45] As explained in the Allocation Framework Rule that in the context of allocating and expending allowances, EPA interprets the word ''consume'' as the verb form of the defined term ''consumption.'' *See* 86 FR 55122, n. 7 Oct. 5, 2021); see also definition of ''consumption'' in subsection (b)(3) of the AIM Act and 40 CFR 84.3. The distinct term ''consumer'' is not defined in the AIM Act. In the context of subsection (i) of the AIM Act, we understand and are using the term ''consumer'' in a more general way, consistent with its everyday dictionary meaning, for example to refer to a person who purchases goods or services for personal use or the ultimate consumer of a product.

[46] We note, however, that in some cases the ultimate consumer may have purchased a product where the first incorporation of the regulated substance occurs when the product is in the ultimate consumer's ownership, and in those cases that incorporation would be covered by the proposed requirements.

EPA is proposing that the compliance date for the restrictions on the sale, distribution, or export of a regulated product be one year after the compliance date for the prohibition on production and import. Most of the proposed restrictions on the manufacture and import of products using HFCs have a proposed compliance date of January 1, 2025. As such, restrictions on the sale and distribution of those products would be January 1, 2026. Providing one year to sell existing inventory should be sufficient given that compliance date would be more than two years from the date of the final rule and many manufacturers are anticipating this action. EPA prefers a time-limited period during which products can continue to be sold over an approach that indefinitely exempts the sale of existing inventory. Having a date certain for the sale and distribution of regulated products facilitates enforcement of the manufacturing and import restriction. Manufacturers, importers, and distributors can avoid stranding inventory by promptly beginning their transitions. EPA welcomes comment on the effect of a one-year sell through, including the potential for stranding inventory or disadvantaging entities that have completed their transitions.

As noted, for the most part, EPA is designing its restrictions to apply to newly manufactured products and equipment rather than existing or used products and equipment (both addressed below). However, EPA is proposing to restrict the import of existing and used products that do not meet the proposed GWP limits or other restrictions. EPA does not interpret the AIM Act's restriction on EPA's authority to regulate equipment in existence in the sector or subsector prior to December 27, 2020, as applying to imports of equipment that was manufactured prior to that date but was not imported until after that date (see section VII.C.3 of this preamble for additional discussion). EPA is electing to apply its GWP limit restrictions or other restrictions to imports of existing and used products and equipment because failing to prohibit the import of these products could have the effect of undermining the transition from higher-GWP HFCs in the sectors and subsectors that are the subject of this proposal. Permitting the import of existing and used products that did not meet the proposed restrictions could shift market share away from domestically manufactured products that use conforming lower-GWP HFCs or substitutes, towards imported products that continue to use higher-GWP HFCs. The goal of restricting the use of regulated substances (*i.e.,* higher-GWP HFCs) in the named sectors and subsectors would be undermined if those sectors and subsectors simply shifted use to imported existing or used products containing higher-GWP HFCs. EPA is seeking comment on its proposal to apply restrictions on the use of HFCs to the import of existing and used products.

The AIM Act defines ''import'' as ''to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States,'' and we have proposed to codify that definition into our subpart B regulations. We note that this statutory definition contains no threshold volume of business an entity would need to undertake in order to qualify as an importer. As such, EPA intends its proposed restrictions to cover any importation of regulated products. The Agency's intention is to cover the activities of importers bringing large shipments of products or equipment into the country, as well as activities of entities bringing smaller groups of regulated products into the country (*e.g.,* driving a truckload of air conditioning units across the Canadian or Mexican border for sale in the United States).

As discussed above, because EPA proposes to interpret ''use'' to include activities in the market chain involving regulated products that occur subsequent to manufacture or import, the proposed use restrictions would also apply to any person who sells, distributes, offers for sale or distribution, makes available for sale or distribution, or exports any regulated product in the sectors or subsectors controlled under subsection (i). Applying the restriction in this way ensures that the goal of restricting the use of regulated substances in the sectors or subsectors in which the regulated substances are used can be achieved, because the sector and subsector's use of the regulated substance is present in all these aspects of the market chain, and EPA's intention in this proposal is to restrict use across that chain. Therefore, even if a manufacturer or importer improperly introduces a regulated product that does not meet the proposed restriction into the U.S. market, distributors and retailers offering that product for sale, including online retailers, are also restricted from covered activities related to that product. The intent of the proposed restriction is to remove products that do not meet the proposed limits from circulation in the U.S. market.

However, EPA is proposing not to apply its GWP limit restrictions or other restrictions to the sale or distribution, or offer for sale or distribution, of used products. By used products, we mean products that have been in the ownership of an ultimate consumer and have experienced ordinary operation or utilization by an ultimate consumer. Some regulated products, such as air-conditioning and refrigerated appliances, are often conveyed with the sale of a building and could not reasonably be excluded from that conveyance. Other regulated products may be incorporated into a larger good, such as an MVAC in a motor vehicle, which may be sold multiple times during the useful life of the good. Restricting the sale of used products or equipment that use HFCs likely would significantly decrease the value of those goods and impact the market for used products (*e.g.,* trading in a used motor vehicle during the purchase of a new one). Extending the proposed restriction to the sale of used products could have overall detrimental environmental effects, by requiring consumers to discard products or equipment before the end of the product's useful life, and could negatively impact affordability for consumers by eliminating options to purchase used products. EPA typically has not restricted the sale of used products containing ODS and proposes to maintain a similar approach for this rule. We note that our proposed exemption for the sale or distribution, or offer for sale or distribution, of used products is intended to cover both individuals selling products they have used (*e.g.,* an appliance they have owned and used for a period of time) as well as entities that do volume business in used products (*e.g.,* stores selling second-hand goods or car-dealerships selling pre-owned vehicles). However, this used products exemption is not intended to cover entities that purchase products that are subject to the proposed restrictions on manufacture and import, hold those products for a period of time, and then re-sell the products. We have accordingly specified that products must have experienced ordinary operation or utilization by an ultimate consumer for a period of time in order to qualify for the proposed used product exemption.

2. Would the proposed use restrictions also apply to products that are manufactured for export?

As discussed above, EPA interprets a sector or subsector's ''use'' to cover not only manufacture and import of a regulated product, but also the subsequent activities in the market chain related to regulated products. Specifically, we interpret export to be included in the meaning of ''use.'' Where EPA has determined, consistent with consideration of the factors listed in subsection (i)(4), that it is appropriate to restrict the use of HFCs, we believe it would be reasonable for restrictions on domestically manufactured products intended for the U.S. market to apply equally to domestically manufactured products intended for export. Applying the proposed restrictions to all domestically manufactured regulated products treats materially similar uses of HFCs in the same manner. Including exports as one of the activities subject to the proposed rule's prohibitions would prevent the limited supply of HFCs in the United States from being exported in products that could use substitutes. A company cannot file for a request for additional consumption allowances based on the export of a product containing regulated substances; requests for additional consumption allowances are limited to the export of bulk HFCs. 40 CFR 84.17. As with products manufactured for domestic use, one intent of this regulation is to ensure that sectors and subsectors that are currently using HFCs and that are well-positioned, per EPA's determination under the (i)(4) factors, to transition to substitutes, actually make that transition, leaving more of the limited supply of HFCs for those sectors and subsectors that currently cannot use substitutes. In addition, including exports as a prohibited activity also supports global efforts to address HFC uses in light of the Kigali Amendment, and could be welcomed by countries that have or intend to also restrict the use of HFCs in a similar manner.

3. Would restrictions apply to existing equipment?

Under subsection (i)(7)(B)(ii) of the Act, ''a rule promulgated under this subsection shall not apply to, . . . except for a retrofit application, equipment in existence in a sector or subsector before the date of enactment of this Act.'' 42 U.S.C. 7675(i)(7)(B)(ii). As such, EPA's proposed restrictions would not apply to the sale or distribution, or offer for sale or distribution, or export of any equipment that was in existence in the sector or subsector prior to December 27, 2020, the date on which the AIM Act was enacted.

EPA is codifying the statutory exemption for equipment in existence in a sector or subsector prior to December 27, 2020, into the proposed regulations. We propose that modifications, servicing, or repairs to equipment in existence prior to December 27, 2020, would not be considered ''manufacture'' under this proposed rule, and that these actions with respect to existing equipment would therefore not change the status of whether this equipment ''existed'' prior to December 27, 2020, and render such equipment subject to the proposed restrictions. Subsection (i)(7)(B)(ii) of the Act refers to *equipment* in existence before December 27, 2020. ''Equipment'' could encompass not just a product or appliance, but also components or parts of that product or appliance. Even if a person were to service, repair, or replace parts of a product or appliance, other parts of that equipment would still have been in existence prior to December 27, 2020, and would arguably be outside the scope of EPA's regulatory authority under subsection (i)(7)(B)(ii). In limited cases, where every part of a piece of equipment had been altered or replaced after December 27, 2020, such equipment would fall outside the statutory and regulatory exemption. In addition, under the AIM Act subsection (i)(7)(B)(ii), EPA retains authority to apply its restrictions to ''retrofit applications,'' where existing equipment is upgraded by changing the regulated substance used. See AIM Act subsection (i)(7)(A). The Act specifies that ''retrofit'' is where upgrades are made to existing equipment where the regulated substance is changed and which ''(i) include the conversion of equipment to achieve system compatibility and (ii) may include changes in lubricants, gaskets, filters, driers, valves, o-rings, or equipment components for that purpose.'' EPA is not at this time proposing provisions addressing retrofits.

EPA interprets subsection (i)(7)(B)(ii)'s limit on authority to regulate existing equipment to be applicable to equipment that existed before December 27, 2020, but is proposing that equipment be in the United States to qualify for that exception. Subsection (i)(7)(B)(ii) provides an exception for ''equipment in existence *in a sector or subsector* before December 27, 2020,'' (emphasis added) which EPA is proposing to interpret as a sector or subsector in the United States. In general, where those terms appear in the AIM Act, EPA understands them to mean the domestic sector or subsector, not the sector or subsector as it exists, operates, and functions in another country. For example, in assessing the availability of substitutes in a sector or subsector under subsection (i)(4)(B), EPA is proposing to, in general, analyze the various subfactors—consumer costs, building codes, appliance efficiency standards, contractor training costs—vis a vis the domestic impacted sector or subsector.[47] Therefore, EPA is proposing that a product that was manufactured in another country and existed prior to December 27, 2020, but was not imported to the United States until after that date is not subject to subsection (i)(7)(B)'s limitation, because until it is imported into the United States, it is not ''in existence in the sector or subsector.'' EPA therefore proposes that its prohibitions on import would apply to all regulated products imported after the effective date of the rule, even if those products existed in another country prior to December 27, 2020.

4. Effective and Compliance Dates of Rules Promulgated Under Subsection (i)

Subsection (i)(6) of the AIM Act states that ''[n]o rule under this subsection may take effect before the date that is 1 year after the date on which the Administrator promulgates the applicable rule under this subsection.'' EPA interprets this provision as applying to the establishment of restrictions on use of HFCs under subsection (i)(1) of the Act. Therefore, EPA is proposing compliance dates for the proposed restrictions on the manufacture and import of regulated products that are at least one year from the date the rule is promulgated, in accordance with this statutory provision. Factors that may affect these compliance dates include the timing for availability of substitutes, the HFC phasedown schedule, and other factors such as building code updates.

The proposed provisions that are focused on program administration and petitions processing (*i.e.,* § 84.64), do not include a delayed compliance date, so EPA proposes that those provisions come into effect 30 days after publication of the final rule in the **Federal Register**. This approach is based on an interpretation that (i)(6) does not apply to those provisions because ''applicable rules'' in (i)(6) are

[47] EPA is examining international information for some of the analyses, such as research from international organizations about technological achievability, because such information has relevance for the sector or subsector in the United States.

limited to rules that apply use restrictions under (i)(1). As a practical matter, the regulated industry to which a use restriction rule is being applied may need a full year to come into compliance with that restriction. While a petitioner may need some amount of time to collect the information this action proposes to impose, we think 30 days is a reasonable timeframe in which to do so. EPA is soliciting comment on this interpretation and is also soliciting comment on whether it should instead interpret subsection (i)(6) to apply to the other provisions under subsection (i) and provide at least a year to come into compliance with those provisions as well.

D. How is EPA proposing to address restrictions on the use of HFCs requested in petitions granted?

EPA is addressing three sets of petitions in this proposed action: the 11 petitions granted or partially granted on October 7, 2021; additional petitions submitted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) which updated previously submitted petitions; and two petitions granted by EPA on September 19, 2022. EPA is addressing these granted petitions in a single rulemaking rather than through separate proposals. In some instances, particularly where the petitioned sectors and subsectors overlap, responding through a single rulemaking allows for a complete analysis in a single location. Consistent with EPA's authority under subsection (i)(1) of the AIM Act, EPA is also proposing restrictions on the use of HFCs in certain sectors and subsectors that were not included in petitions received by the Agency to date.

1. Petitions Granted on October 7, 2021

On October 7, 2021, EPA granted ten petitions and partially granted one petition under subsection (i) of the AIM Act (86 FR 57141, October 14, 2021). Copies of petitions granted (including the full list of petitioners and co-petitioners), a detailed summary of each petition, and EPA's rationale for granting these petitions are available under Docket ID EPA–OAR–2021–0643. Five of the granted petitions specifically requested that EPA replicate, in varying degrees, certain restrictions on use of HFCs based on the changes of status contained in EPA's SNAP Rules 20 and 21. These five petitions were received from the Natural Resources Defense Council et al. (hereby, ''NRDC''); DuPont (two petitions); American Chemistry Council's Center for the Polyurethanes Industry (hereby, ''CPI''); and the Household & Consumer Product Association and National Aerosol Association (hereby, ''HCPA''). These petitions requested restrictions on the use of specific HFCs or blends containing HFCs in refrigeration, air conditioning, and heat pump, foams, and aerosols sectors.[48] Another five petitions requested that EPA establish GWP limits for HFCs used in certain stationary AC and/or refrigeration subsectors. These petitions were received from the Environmental Investigation Agency et al. (hereby, ''EIA''), AHRI (two petitions), Association of Home Appliance Manufacturers (hereby, ''AHAM''), and International Institute of Ammonia Refrigeration et al. (hereby, ''IIAR''). The one partially granted petition, submitted by California Air Resources Board et al. (hereby, ''CARB''), requested two types of restrictions: (1) certain restrictions on the use of HFCs contained in EPA's SNAP Rules 20 and 21 in the RACHP, foams, and aerosols sectors and (2) restrictions on the use of HFCs based on GWP limits in certain stationary AC and refrigeration subsectors. CARB also requested EPA regulations should not limit states' ability to further limit or phase out the use of HFCs in their jurisdictions.

2. How is EPA proposing to address additional petitions that cover similar sectors and subsectors?

EPA received two additional petitions from AHRI on August 19, 2021, and October 12, 2021. The first petition requested that EPA establish transition dates for ''New Refrigeration Equipment'' [49] for certain commercial refrigeration subsectors listed, along with the associated maximum GWP. AHRI requested that the transition dates be at least two years after the adoption of safety standards and building codes.[50] AHRI's second petition in this category requested that EPA establish transition dates for ''New Refrigeration Equipment'' for specific chiller applications listed, along with the associated maximum GWP.

EPA is treating these two AHRI petitions as addenda to their October 7, 2021, granted petitions, and not as separate petitions, since the subsectors listed in these petitions are contained in the granted AHRI petitions and AHRI refers to these as further steps in the transition for these uses. The main difference between the requested action in these two petitions and the granted petitions is the lower GWP limits with later compliance dates. Since EPA is considers these two petitions as addenda to petitions granted on October 7, 2021, this proposed rulemaking addresses these requests.

3. Petitions Granted on September 19, 2022

On September 19, 2022, EPA granted two additional petitions that requested EPA establish restrictions on the use of HFCs in certain commercial refrigeration subsectors based on GWP limits. These petitions were received from AHRI and IIAR and covered similar commercial refrigeration subsectors contained in petitions granted on October 7, 2021. One difference to note is that both the AHRI and IIAR petitions requested restrictions on the use of HFCs for equipment types beyond what was covered in many of the petitions granted on October 7, 2021 (*i.e.,* all equipment with refrigerant charge capacities less than 200 pounds) in listed subsectors. EPA granted these petitions based on its consideration of the (i)(4) factors in light of the information then available. Given the Agency was already developing this proposed rulemaking which addresses restrictions the use of HFCs in the sector and subsectors contained in these newer petitions, recognizing the extensive overlap with the petitions granted on October 7, 2021, and in an effort streamline rulemakings, EPA is addressing these newer petitions in this proposal, as well. Copies of the AHRI and IIAR petitions can be found in the docket for this proposal.

E. Subsection (i)(4) Factors for Determination

Subsection (i)(4) of the AIM Act directs EPA to factor in, to the extent practicable, a number of considerations in evaluating petitions and in carrying

[48] EPA notes that while these petitioners requested that EPA establish restrictions on the use of HFCs by restricting specific HFCs or blends containing HFCs, it does not necessarily mean that these petitioners preferred this restriction format over establishing restrictions on the use of HFCs by establishing GWP limits. EPA believes that these petitioners requested restrictions on the use of specific HFCs and blends containing HFCs in this way to replicate the format presented in SNAP Rules 20 and 21.

[49] AHRI suggests a definition for ''New Refrigeration Equipment'' as follows: equipment built with new components and equates to a nominal compressor capacity increase across the refrigeration appliance or an increase of the CO_2 equivalent of the refrigerant in the refrigeration appliance. Under this suggested definition, the replacement of components in Existing Refrigeration Systems would be permissible if the nominal compressor capacity is not increased across the refrigeration appliance or the CO_2 equivalent of the refrigerant in the refrigeration appliance is not increased.

[50] A discussion on the status of safety standards and building codes that may impact compliance dates is in section VII.E of this preamble.

out a rulemaking. EPA is not proposing regulatory text regarding these factors at this point; however, this section provides a summary of how the Agency interprets the (i)(4) factors and how EPA considered them for the current proposal. EPA's consideration of the (i)(4) factors served as the basis for the restrictions the Agency is proposing for each sector and subsector covered by this proposal (for additional discussion see section VII.F.1 of this preamble).

1. How is EPA considering best available data?

Subsection (i)(4)(A) of the AIM Act directs the Agency to use, to the extent practicable, the best available data in making a determination to grant or deny a petition or when carrying out a rulemaking under subsection (i). In this context, EPA interprets the reference to best available data as an instruction with respect to the other factors under (i)(4) rather than as an independent factor. EPA notes best available data may not always mean the latest data. For example, the latest data may benefit from peer review. This should not be interpreted as meaning EPA would only consider best available data to be peer-reviewed data, but that peer review is one consideration that could inform our understanding of what is the best available data in particular situations.

The best available data that the Agency is considering for this proposal includes, but is not limited to, the following: SNAP program listing decisions; Montreal Protocol reports by TEAP and its Technical Options Committees, and Temporary Subsidiary Bodies (*e.g.,* Task Forces); [51] TSDs from states with HFC restrictions; [52] information from other federal agencies and departments (*e.g.,* Department of Energy); proceedings from technical conferences; and journal articles. For some of the factors and subfactors, EPA developed TSDs that provide information from these sources and others that EPA believes to be the best available data. Furthermore, EPA is considering information provided to the Agency from industry, trade associations, environmental non-governmental organizations, academia, standard-setting bodies, petitioners, stakeholder meetings that the Agency hosted, and other sources in response to EPA making the petitions publicly available through Docket ID No. EPA–HQ–OAR–2021–0289, to the extent that we think such information represented best available data. EPA welcomes comment on these and other sources that the Agency should consider concerning the (i)(4) factors.

2. How is EPA considering the availability of substitutes?

Subsection (i)(4)(B) of the AIM Act directs EPA to factor in, to the extent practicable, the availability of substitutes for use of the regulated substance that is the subject of the rulemaking or petition, as applicable, in a sector or subsector. Several factors inform the availability of substitutes for use in sectors and subsectors, based on the statutory language in subsection (i)(4)(B). As part of EPA's consideration of availability of substitutes, the AIM Act directs us to take into account, to the extent practicable, the following subfactors: technological achievability, commercial demands, affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import.

EPA is not proposing definitions for each of these subfactors but is providing an interpretation of how consideration of the subfactors relates to the consideration of the availability of substitutes. EPA is considering the (i)(4)(B) subfactors collectively, with no one subfactor solely governing the restrictions proposed for any sector or subsector. EPA is not required to weigh all subfactors equally when considering the availability of substitutes. Subsection (i)(4) directs the Agency to consider the factors listed in (i)(4), including availability of substitutes, ''to the extent practicable.'' EPA interprets this phrase to extend to its consideration of the subfactors in (i)(4)(B), given that these subfactors are to be taken into account in considering the availability of substitutes ''to the extent practicable.'' Furthermore, not all the subfactors in (i)(4)(B) may be applicable to each sector or subsector. For example, appliance efficiency standards would not be applicable to aerosols. Similarly, it may not be practicable to consider some subfactors in some situations; for example, there may not be sufficient available data regarding a specific subfactor. Likewise, EPA anticipates that in most situations, no single subfactor will be dispositive of its consideration of the availability of substitutes under subsection (i)(4)(B). For this proposal, the Agency's consideration of the availability of substitutes took into account, to the extent practicable, the relevant subfactors using the best available data. Additional information on some of these subfactors is available in the docket.

Lower-GWP HFCs and substitute substances and technologies that can be used in place of higher-GWP HFCs have been the subject of evaluation for decades. EPA, state and foreign governments, industry standards organizations, and international advisory panels have long been identifying and assessing substances that can be used in lieu of higher-GWP HFCs and their predecessors, often for uses within the sectors and subsectors subject to this proposal. EPA has therefore drawn upon information generated by these efforts in considering the subsection (i)(4) factors in the context of this proposal, and in particular, in considering the availability of substitutes under subsection (i)(4)(B). While these entities have evaluated substitutes for HFCs in other contexts, the information generated by these efforts provides a useful starting point. For example, in the SNAP program under section 612 of the Clean Air Act, EPA identifies and evaluates substitutes for ODS in certain industrial sectors, including refrigeration, air conditioning, and heat pumps (RACHP); aerosols; and foams. To a very large extent, HFCs are used in the same sectors and subsectors as where ODS historically have been used. Under SNAP, EPA evaluates acceptability of substitutes for ODS based primarily on the potential human health and environmental risks, relative to other substances used for the same purpose. In so doing, EPA assesses atmospheric effects such as ozone depletion potential and global warming potential, exposure assessments, toxicity data, flammability, and other environmental impacts. This assessment could take a wide range of forms, such as a theoretical evaluation of the properties of the substitute, a computer simulation of the substitute's performance in the sector or subsector, lab-scale (table-top) evaluations of the substitute, or equipment tests under various conditions. These assessments under SNAP are relevant to some of the subsection (i)(4) factors, particularly with respect to safety (and the resultant impact on availability of a substitute under (i)(4)(B)) and environmental impacts. We have therefore considered SNAP assessments and listings of acceptable substances in our

[51] The Technical Economic Assessment Panel is an advisory body to the parties to the Montreal Protocol and is recognized as a premier global technical body; reports available at: *https://ozone.unep.org/science/assessment/teap.*

[52] An example is CARB's Initial Statement of Reasons and Standardized Regulatory Impact Assessment (SRIA) report. Available at: *https://ww2.arb.ca.gov/rulemaking/2020/hfc2020.*

consideration of the (i)(4) factors and establishment of use restrictions under subsection (i).

Further, manufacturers and formulators submit substitutes to EPA for evaluation under SNAP which can lead to the substitute being added to the list of acceptable substances. EPA believes that if a manufacturer has submitted a substance for evaluation under SNAP, it would be reasonable to consider that as a possible indication that the substitute is technologically achievable for a given sector and that there is commercial demand for it. In addition, a substitute listed by EPA as acceptable for a given end-use under SNAP would most likely have been submitted by industry only if the submitter felt that the substitute was possibly technologically achievable and that there could be a market for such substitute.

In this proposal, EPA has also considered the work undertaken by the TEAP. The TEAP analyzes and presents technical information and recommendations when specifically requested by parties to the Montreal Protocol. It does not evaluate policy issues and does not recommend policy. Such information is related to, among other things, substitutes that may replace the substances controlled under the Protocol and alternative technologies that may be used without adverse impact on the ozone layer and climate. The TEAP assesses the technical and economic feasibility of substitutes for sectors and subsectors that use HFCs and publishes various technical reports through different technical committees, such as the Refrigeration, Air Conditioning, and Heat Pumps Technical Options Committee.[53] In TEAP's evaluation of HFC substitutes, subfactors such as technological achievability and affordability have been considered to some extent. For this proposal, EPA considered technical and economic information from the TEAP's 2018 Quadrennial Assessment Report and the recent 2022 Progress Report, including the response to ''*Decision XXXIII/5—Continued provision of information on energy-efficient and low-global-warming-potential technologies*'' found in Volume 3 of the Progress Report.[54] [55] [56]

EPA also considered materials developed by or submitted to state and foreign governments with requirements that restrict the use of HFCs. Many of these jurisdictions highlight available substitutes that can be used for regulated substances that are the subject of this proposed rulemaking. This is not an exhaustive list of sources that EPA could use in the future to consider the availability of substitutes. Section VII.E.1 of this preamble describes additional sources of information that the Agency considers to be best available data. For future Agency actions under the technology transitions program, EPA would likely again consider information from these sources to assess availability of substitutes but notes that the Agency may augment or omit sources where appropriate to be consistent with the Agency's interpretation of subsection (i)(4)(A).

In this proposal, EPA is identifying substitutes[57] for use of regulated substances in specific sectors or subsectors by reviewing information from several of these sources, which the Agency considers to be best available data. EPA compiled a non-exhaustive list of substitutes available that informed the GWP limit or restriction that EPA is proposing. See *American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: List of Substitutes,* referred to in this preamble as the ''List of Substitutes TSD.'' That TSD and list were developed after considering, to the extent practicable, the (i)(4)(B) subfactors, as discussed below and in the other TSDs available in the docket. Substitutes for regulated substances have been identified in this list as available for the sectors and subsectors for which EPA is proposing restrictions.

EPA notes that some of the substitutes EPA lists as available for a sector or subsector may not be available uniformly throughout the United States and/or be subject to state or local regulations, including building codes (see section VII.E.2.d of this preamble). The AIM Act directs EPA to factor in, to the extent practicable, the availability of substitutes but does not limit our consideration to only those substitutes that can be used without restrictions, including state or local regulations. EPA is also considering research and development both in the United States and in other countries, which may indicate the availability of substitutes for use in the near or long term. EPA notes that the list of substitutes in the docket, in isolation, does not represent EPA's complete analysis of the availability of substitutes.

The rest of this section provides information on EPA's interpretation of the subfactors that subsection (i)(4)(B) directs EPA to take into account, to the extent practicable, in assessing the availability of substitutes.

a. Commercial Demands and Technological Achievability

Two of the separate subfactors that subsection (i)(4)(B) directs EPA, to the extent practicable, to take into account in its consideration of availability of substitutes are commercial demands and technological achievability. This section provides information on how the Agency views each term on its own, their potential impact on availability of substitutes, and their interconnectedness.

EPA views commercial demands as interest from OEMs and product manufacturers to use substitutes in products for ultimate sale or distribution. An OEM's interest in using a substitute is tied to their ability to meet consumer needs. One method to determine commercial demands is to assess what types of products in a sector or subsector are for sale and what regulated substances or substitutes are being used. Another means for assessing commercial demands is to review the information companies provide including but not limited to information concerning planned releases of products or equipment using substitutes.

EPA views technological achievability as the ability for a substitute to perform its intended function in a sector or subsector. For example, technological achievability can be demonstrated through a substitute's compliance with or listing by standard setting bodies such as ASHRAE or the Underwriters Laboratories (UL) or use through testing and demonstration labs and projects.

EPA is providing additional information in the TSD *American*

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[53] The TEAP 2018 Quadrennial Assessment Report includes sections for each of the Technical Options Committees (TOC): Flexible and Rigid Foams TOC, Halons TOC, Methyl Bromide TOC, Medical and Chemicals TOC, and Refrigeration, Air Conditioning and Heat Pumps TOC. Available at: *https://ozone.unep.org/science/assessment/teap.*

[54] In accordance with Article 6 of the Montreal Protocol, every four years the parties request assessments from various advisory bodies, including the TEAP's quadrennial assessment of the sectors and subsectors covered by the petitions. Under Decision XXVIII/2 the TEAP is also instructed to review HFC substitutes every five years. The parties also routinely request reports considering transitions and/or related topics (*e.g.,* commercial fisheries, energy efficiency for the refrigeration and air conditioning sector).

[55] TEAP 2022 Progress Report (May 2022) and 2018 Quadrennial Assessment Report. Available at: *https://ozone.unep.org/science/assessment/teap.*

[56] Volume 3: Decision XXXIII/5—Continued provision of information on energy-efficient and low-global-warming-potential technologies, Technological and Economic Assessment Panel, United Nations Environment Programme (UNEP), May 2022. Available at: *https://ozone.unep.org/system/files/documents/TEAP-EETF-report-may-2022.pdf.*

[57] Inclusion of a substitute, either in the preamble or the docket, is for informative purposes only and is not intended as an EPA endorsement or recommendation.

Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: Technological Achievability and Commercial Demands, referred to in this preamble as the ''Commercial Demands and Technological Achievability TSD''; this TSD supports the Agency's consideration of the commercial demands and technological achievability subfactors and is available in the docket. The Commercial Demands and Technological Achievability TSD identifies information on products using substitutes that are commercially available (*i.e.,* products for sale), or where manufacturers indicate they soon will be available, by sector and subsector. EPA views commercial availability of products using substitutes as an indication of both commercial demand and technological achievability. In other words, a product using an available substitute in a market means that the particular substitute is technologically achievable and that there is a commercial demand for that substitute. The Agency relied on a range of sources and considered where products are already available as well as where products are expected to be available given their use in other countries and/or manufacturer announcements. These sources include, but are not limited to, publicly available data such as information on ENERGY STAR products, company websites, SNAP listings, news articles, market reports, and communication with industry experts. EPA also considers information that was provided to relevant state bodies as informative when considering whether a technology is achievable or in commercial demand for the purposes of evaluating available substitutes in their respective rulemakings. Another source for considering technological achievability and commercial demand is the information provided by petitioners.[58] EPA notes that the Agency did not attempt to consider all versions and models of all products or equipment in every sector or subsector.

EPA is not limiting its consideration of commercial demands and technological achievability to a specific geographic region since products may be introduced in a few markets first. The information provided in this proposed rule and the Commercial Demands and Technological Achievability TSD available in the docket are based on the best available data and were considered to the extent practicable.

EPA is seeking comment on the Agency's interpretation of commercial demand and technological achievability and their potential impact on availability of substitutes.

b. Consumer Costs and Affordability for Residential and Small Business Consumers

Subsection (i)(4)(B) directs EPA, to the extent practicable, to take into account consumer costs and affordability for residential and small business consumers, among other subfactors, in its consideration of availability of substitutes. For this proposed action, which is targeted at restricting the use of HFCs in products by certain sectors and subsectors, EPA is considering these two subfactors together. EPA views residential and small business consumers as a subset of consumers at large, and any estimated costs to consumers because of proposed use restrictions includes costs to these groups. Most small businesses and most consumers, including residential consumers, would be downstream of the actions that would be taken in response to the proposed restrictions. Upstream users would include manufacturers who could be introducing new products that conform with the proposed restrictions, while most small businesses, such as installers and service technicians, would be further downstream of such actions, as would most consumers, including residential customers.

EPA evaluated the impacts of the rule on small business consumers in affected sectors and found that the vast majority of affected small businesses will experience zero or positive net impacts due to the reduced costs of substitute chemicals as compared to HFCs. EPA also expects the impacts on service technicians to be minimal because the transitions to different refrigerants required by this proposed rule are already occurring in many of the subsectors addressed due to compliance with other regulations being implemented in some states. Although not affecting the entire United States, the advantages of having products that can be sold nationally and comply with regulations in export markets has led many manufacturers to begin the transition to HFC alternatives. Further, several corporations have established internal sustainability goals and as part of those efforts they are addressing the HFC used in their businesses and products. Additional information on potential impacts of the proposed rule on small businesses can be found in the Small Business Regulatory Enforcement Fairness Act (SBREFA)[59] screening analysis located in the docket for this rulemaking.

One factor that affects affordability for residential and small business consumers is up-front capital costs for new equipment. Compared to large businesses, both groups may be less likely to be able to afford high up-front capital costs that, for some subsectors, may ease the transitions. Such costs, however, do not have to be borne immediately by either residential or small business consumers. This rule does not propose that equipment be retired by any specific date, nor are estimates of emission reductions associated with these proposed restrictions predicated on the assumption that equipment would be retired prematurely. Additionally, HVAC services generally comprise only a small fraction of income for residential consumers.

We expect that under the HFC phasedown, access to HFCs, both newly manufactured and reclaimed, will continue far into the future particularly given that the AIM Act directs EPA to phase down and not to phase out HFC production and consumption. There already exists a network of reclaimers who offer reclaimed HFCs that can be used to service existing equipment for its full useful life. EPA notes that reclaimed chlorofluorocarbons (CFCs) and hydrofluorocarbons (HCFCs) remain available in the United States for servicing equipment that was designed, sold, installed, and may today still be operated by residential consumers and small businesses throughout the United States. Furthermore, as explained in this section below, we find that overall, the proposed rule is expected to provide net savings to the economy, which may in turn be passed on to small businesses and residential consumers.

For this proposal, which covers a wide range of sectors and subsectors, EPA has prepared a *Costs and Environmental Impacts* TSD summarizing some analytical results—including the expected costs and negative costs (*i.e.,* savings) to industry associated with transitions—that we factored in, in our consideration of these subfactors. Specifically, the *Costs and Environmental Impacts* TSD summarizes the increase in costs, or the savings, to industry associated with transitioning from a regulated substance to a substitute. EPA believes that the best way to analyze consumer costs and affordability is to look not at the cost of a product using a substitute, but rather at expected changes in costs resulting

[59] *Economic Impact Screening Analysis for Restrictions on the Use of Hydrofluorocarbons under Subsection (i) of the American Innovation and Manufacturing Act,* available in the docket.

from the transition. Hence, this discussion (and the *Costs and Environmental Impacts* TSD) refers to the cost of a regulated product with a substance that complies with the proposed restriction compared to that same product using a prohibited substance. For example, for the residential and light commercial air conditioning and heat pump subsector, the costs of manufacturing units that use lower-GWP substances or blends (*e.g.,* R–454B), and maintaining the operation of that equipment, compared to those costs for a baseline unit (*e.g.,* one that uses R–410A including the operation and maintenance of that unit), are used to generate an approximate accounting of the full cost (or potential savings) of the transition. To the extent available, energy efficiency changes, which can result in savings to, or costs borne by, the consumer, were factored into the transition scenarios analyzed. EPA notes that the *Costs and Environmental Impacts* TSD analysis indicates that the substitute used could be more or less expensive than the regulated substance currently or recently used. However, we note that the cost of using a regulated substance or substitute generally represents only a small fraction of the total cost of the product.[60] Even a large change in the cost of the substance that is realized as a result of the transition (*i.e.,* from using a regulated substance to using a substitute) would therefore not usually have a significant impact on the overall cost of the product. Further, given that many substitutes are engineered to perform in a similar manner as the regulated substance (*e.g.,* R–513A, R–452B, and R–454B are designed to perform like HFC–134a, R–404A, and R–410A, respectively), the equipment to use them would typically not need extensive redesign and would be expected to have a similar cost and similar performance with either the regulated substance or the substitute.

Data to develop the cost estimates summarized in the *Costs and Environmental Impacts* TSD were derived from a variety of information sources including technical literature and experts, and EPA also provides additional details regarding the data used in the RIA addendum and its accompanying appendices and references cited. The cost factors were applied to develop transition scenarios, consistent with this proposed rule, using EPA's Vintaging Model and, the resulting costs and abatement were used in a similar manner as the Marginal Abatement Cost (MAC) analysis explained in the Allocation Framework RIA.

It is likely the costs for HFCs will increase given the phasedown of HFC production and consumption mandated in the AIM Act and the global HFC phasedown under the Kigali Amendment to the Montreal Protocol. The Agency is aware of some price increases to date. However, EPA notes that for the RACHP sector, the cost of refrigerant is less than one percent of the entire cost of the system, and the highest costs come from raw materials such as copper, steel, and aluminum that are used to make the equipment.[61] In most cases, with newer, more efficient refrigerants, less refrigerant is necessary in the finished product. This can decrease the amount of copper, steel, and aluminum necessary for the product since it decreases the amount of raw material needed to create heat transfer elements in the equipment. The most recent increases in the price of HFCs are not included in this analysis, and the savings from using less raw materials and improved energy efficiency are only applied where literature supporting such claims was found. Thus, estimated costs of these proposed restrictions (as presented in the *Costs and Environmental Impacts* TSD) are conservative, and the net savings would likely be higher than estimated. Further, the costs of substitutes are likewise not modeled as changing over time. Although some substitutes are modeled as being more costly than HFCs today, the experience with the ODS phaseout has been that prices generally decline as production increases, as more producers negotiate licensing agreements for certain chemicals, and as patents expire. For example, EPA compiled a memo in the docket which provides a non-exhaustive list of several announcements that have been made regarding the initiation or updating of production plants for various substitutes.[62] Here again, estimated costs, as presented in the *Costs and Environmental Impacts* TSD, are conservative. EPA will continue to monitor these markets to determine whether updates to our analysis are appropriate. As such, we request comment on information regarding up-to-date costs of HFCs and substitutes, and the energy-efficiency implications when applied to equipment in the subsectors addressed in this proposed rule, to help inform our analysis of costs.

EPA has previously analyzed "consumer costs" in relation to "compliance costs" and found very little difference in these.[63] EPA performed this analysis, placed in the docket, as Congress was considering the AIM Act in 2019. Part of the reason for this is that energy efficiency changes of equipment when switching from a regulated substance to a substitute, where available, are included in our estimates of compliance costs. These costs (or savings) would likely not affect the installer or service technician, but would be considered a consumer cost, as it is the consumer who would be affected by this change in energy efficiency through a higher or lower electric bill. The consumer could be a residential consumer or a small business consumer, for instance a restaurant buying a new air conditioning unit.

Another cost that can be assumed to be a cost to consumers is the possible mark-up costs of chemicals sold to the consumer, for example as part of a bill for servicing or repairing an air conditioner where additional refrigerant was needed. Compared to the regulated substance, the substitute could be more or less expensive, and hence the mark-up costs could be more or less than that of the regulated substance. EPA incorporated this cost to consumers in a previous analysis of the HFC phasedown as stipulated in the AIM Act that Congress was considering in 2019. In that analysis, the costs to consumers were approximately $0 to $200 million less than the compliance costs, depending on the compliance step-down year (2020, 2024, 2029, and 2034 were analyzed). Compared to the total cumulative costs or savings estimated, these differences represented no more than a 20 percent difference, and in all cases were decreases in total costs or increases in total savings. Therefore, our cost estimates take into account consumer costs and affordability for residential and small business consumers insomuch as the estimated costs are likely conservative, and the savings to consumers would be greater.

EPA also analyzed whether the proposed action could have a significant

[60] U.S. Department of Energy (DOE), Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Central Air Conditioners and Heat Pumps, December 2016. Available at: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0048-0098.*

[61] *Consumer Cost Impacts of the U.S. Ratification of the Kigali Amendment,* JMS Consulting in partnership with INFORUM, November 2018. Available in the docket.

[62] See memo in the docket that presents company announcements of increased production of lower-GWP substitutes. This memo is for informational purposes and does not represent endorsement by the Agency. EPA further notes that this memo is a non-exhaustive sampling of announcements; there may be other companies announcing increased production of lower-GWP substitutes.

[63] See "*American Innovation and Manufacturing Act of 2019: Compliance and Consumer Cost Estimates*" document in the docket.

economic impact on a substantial number of small business consumers. The analysis found that approximately 162 of the 51,047 potentially affected small businesses could incur costs in excess of one percent of annual sales and that approximately 110 small businesses could incur costs in excess of three percent of annual sales. Based on this analysis, we do not anticipate a broad, significant economic impact on small businesses as a result of this proposal.

EPA is seeking comment on the Agency's interpretation of consumer costs and affordability for small business and residential consumers and their potential impact on availability of substitutes.

c. Safety

Subsection (i)(4)(B) directs EPA, to the extent practicable, to take into account safety in its consideration of availability of substitutes. As part of EPA's consideration of safety, EPA is providing additional information in the TSD *American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: Safety,* referred to in this preamble as the ''Safety TSD''; this TSD supports the Agency's consideration of the safety subfactor and is available in the docket. EPA is reviewing information on flammability and toxicity as well as the ability of substitutes to meet relevant industry safety standards. In our interpretation of best available data, we are evaluating information from recognized industrial sources, including standard-setting bodies, the SNAP program, international technical committees, and information from petitions. Safety information on substitutes may impact the availability of substitutes for use in a particular sector or subsector, for example, if there are restrictions on the use of a substance in local building codes and/or regulatory requirements. Industry acceptance of substitutes that are compliant with safety standards may also be an indication of safety and, therefore, impact the use of a particular substitute.

EPA does not believe that taking into account safety in its consideration of the availability of substitutes is intended to limit substitutes to only those that are risk free. EPA has noted under the SNAP program that the Agency does not require substitutes to be risk free (59 FR 13044, March 18, 1994). Many industry standards are designed to mitigate risk and allow for the safe use of flammable, toxic, or high-pressure substitutes. EPA therefore understands the direction to take into account safety, to the extent practicable, as encompassing consideration of information on the risks associated with the substitute as well as other information that concerns risk mitigation.

EPA has considered the listings under the SNAP program in its assessment of the availability of substitutes in this proposed rule. The SNAP program, in making decisions to list a substitute as acceptable or unacceptable, considers whether a substitute presents human health and environmental risks that are lower than or comparable to overall risks from other substitutes that are currently or potentially available. Under this comparative risk evaluation, the human health risks analyzed include safety, and in particular, flammability, toxicity, exposure to workers, consumers, and the general population of chemicals with direct toxicity; and exposure of the general population to increased ground-level ozone. Under the SNAP program, EPA makes decisions that are informed by its overall understanding of the environmental and human health impacts. EPA can list substitutes as ''acceptable subject to use conditions,'' indicating that a substitute is acceptable only if used in a certain way. Use conditions can include, but are not limited to, warning labels, charge limits, unique fittings for servicing of equipment, and restrictions on where a substitute is used (*e.g.,* normally unoccupied spaces). EPA can also list substitutes as ''acceptable subject to narrowed use limits,'' indicating that a substitute may be used only within certain specialized applications within a sector and end-use and may not be used for other applications within an end-use or sector. EPA lists a substitute as acceptable subject to narrowed use limits because of a lack of available substitutes within the specialized application. Under the acceptable for narrowed use limits category, users of a restricted substitute within the narrowed use limits category must make a reasonable effort to ascertain that other substitutes or alternatives are not technically feasible for reasons of performance or safety. Users are expected to undertake a thorough technical investigation of alternatives to the otherwise restricted substitute. Although users are not required to report the results of their investigations to EPA, users must document these results and retain them in their files for the purpose of demonstrating compliance.

In its evaluation of the safety subfactor under subsection (i)(4)(B), EPA is also considering the safety group classification of refrigerants as designated by the ASHRAE Standard 34. This standard assigns to a refrigerant, including those that could be used under EPA's proposed restrictions, a safety group classification consisting of two to three alphanumeric characters (*e.g.,* A2L or B1). The initial capital letter indicates the toxicity, and the numeral and trailing letter, if any, denotes the flammability. Under this standard, Class A refrigerants are those for which toxicity has not been identified at concentrations less than or equal to 400 parts per million (ppm) by volume, based on data used to determine threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B signifies refrigerants for which there is evidence of toxicity at concentrations below 400 ppm by volume, based on data used to determine TLV–TWA or consistent indices. However, some refrigerants that are listed under the B (higher toxicity) classification of ASHRAE 34 have been used safely and effectively for many years. For example, after the CFC phaseout, several companies offered comfort cooling chillers using HCFC–123, and at least one has since transitioned to R–514A in part of its product line. These systems generally have low leak rates, are located away from building occupants in limited-access areas (*e.g.,* mechanical rooms) with secured entrances, and utilize refrigerant sensors and alarms to alert operators of leaks. Building codes further reduce risks for example by requiring mechanical ventilation to the outdoor space where such systems are placed.

The standard also assigns refrigerants a flammability classification of 1, 2, 2L, or 3. Tests for flammability are conducted in accordance with American Society for Testing and Materials (ASTM) E681 using a spark ignition source at 140 °F (60 °C) and 14.7 psia (101.3 kPa)[64]. The flammability classification ''1'' is given to refrigerants that, when tested, show no flame propagation. The flammability classification ''2'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 Btu/lb), and have a lower flammability limit (LFL) greater than 0.10 kg/m^3. The flammability classification ''2L'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 BTU/lb), have an LFL greater than 0.10 kg/m^3, and have a maximum

[64] ASHRAE, 2019. *ANSI/ASHRAE Standard 34–2019: Designation and Safety Classification of Refrigerants.*

burning velocity of 10 cm/s or lower when tested in dry air at 73.4 °F (23.0 °C) and 14.7 psi (101.3 kPa). The flammability classification ''3'' is given to refrigerants that, when tested, exhibit flame propagation and that either have a heat of combustion of 19,000 kJ/kg (8,169 BTU/lb) or greater or have an LFL of 0.10 kg/m^3 or lower.

For flammability classifications, refrigerant blends are designated based on the worst case of formulation for flammability and the worst case of fractionation for flammability determined for the blend.

Figure 1. Refrigerant Safety Group Classification

Increasing Flammability ↑	Safety Group	
Higher Flammability	A3	B3
Flammable	A2	B2
Lower Flammability	A2L	B2L
No Flame Propagation	A1	B1
	Lower Toxicity	Higher Toxicity
	Increasing Toxicity →	

Information on the ASHRAE classification of each substitute identified by EPA for this proposal and additional information on EPA's consideration of safety are available in the Safety TSD in the docket. EPA is seeking comment on the Agency's interpretation of safety and its potential impact on availability of substitutes and the effect of switching to substitutes on worker and consumer safety in the subsectors affected by this proposed action.

d. Building Codes

Subsection (i)(4)(B) directs EPA, to the extent practicable, to take into account building codes in its consideration of availability of substitutes. For certain types of equipment, especially in the RACHP sector, building codes may inform which substances can be used or may prescribe additional requirements before a specific substance can be used, thereby impacting availability of substitutes for particular sectors and subsectors. This section summarizes EPA's understanding of building code development across the nation generally and how model building codes are developed and adopted into local building codes. EPA is considering this information, to the extent practicable, to evaluate how building codes may affect the availability of substitutes to regulated substances. EPA is providing additional information in the TSD *American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: Building Codes,* referred to in this preamble as the ''Building Codes TSD''; this TSD supports the Agency's consideration of the building codes subfactor and is available in the docket.

Building codes are established at the subnational level and can differ greatly across jurisdictions. Some states develop their own building codes and determine the frequency with which they are updated. Other states adopt (and sometimes amend) ''model'' building codes that are written by code-setting organizations. Code-setting organizations include the International Association of Plumbing and Mechanical Officials (IAPMO), the International Code Council (ICC), and the National Fire Protection Association (NFPA). Many states allow local governments to set their own building codes, provided they comply with the minimum standards established under state building codes. Both state and local building codes are periodically reevaluated and updated. The Agency did not review changes to every jurisdiction's building codes as EPA does not view that as practicable.

Model building codes, which serve as the basis for many state and local building codes, incorporate a range of industry standards that establish specific requirements for building performance or design. Several of these standards are directly relevant to the availability of substitutes in the RACHP sector. For this proposed action, EPA is considering, to the extent practicable, updates to industry standards and if those updates may be incorporated into model building codes that will allow the future use of products that use substitutes. EPA also is considering whether current building codes permit the installation and use of products using substitutes.

Model codes are typically updated on a three-year cycle, and most model building codes were last updated in 2021; the next scheduled updates are for 2024. Several proposed changes in the current code development cycle (*i.e.,* for the 2024 codes) could enhance the availability of HFC substitutes under model building codes in future years. For example, ICC, an international developer of model codes, standards, and building safety solutions, approved fourteen code changes that affect the availability of A2L refrigerants for the RACHP sector. These code changes, which will go into effect in 2024, are consistent with updated industry standards that allow the use of substitutes identified in this proposed rulemaking; however, state and local building code agencies do not automatically adopt updates to the model codes. As a result, there may be delays between when the model codes are updated and when the updated codes are adopted by state and local agencies.

Information from stakeholders, including petitioners, indicates that building codes are being updated both as part of the cyclical review and off cycle that would allow for the use of additional HFC substitutes. For example, several states such as Oregon, California, and Colorado have recently made, or are considering making, changes to their codes that would effectively incorporate updated industry standards as reflected in the model code changes that occurred in 2021. Updated codes may require automatic refrigerant leak detection systems, circulating fans, and labeling and handling instructions

for flammable refrigerants in certain applications and installations.

Given that building codes can vary greatly throughout the United States and that many of the most relevant building codes have either been updated recently or are likely to be updated in the near future, EPA's consideration of building codes is limited to model building codes. Additional information on EPA's consideration of building codes can be found in the Building Codes TSD in the docket. EPA is seeking comment on to what extent EPA can take into account building codes recognizing that they vary based on local circumstance.

e. Appliance Efficiency Standards

As part of the Agency's consideration of the availability of substitutes as directed by subsection (i)(4)(B), EPA is taking into account, to the extent practicable, the appliance efficiency standards that are applicable to products in the affected sectors and subsectors. The Agency consulted with U.S. Department of Energy (DOE) regarding relevant minimum energy efficiency standards and the timing for any planned changes to the current standards.[65] DOE, through its Building Technologies Office and Appliance and Equipment Standards Program, sets minimum energy efficiency standards for more than 60 different products, including appliances and equipment used in homes, businesses, and elsewhere. Several of these categories are within the RACHP sector and may use HFCs that are covered in this proposed action. Among product categories relevant to this action are consumer products (*e.g.,* refrigerators, freezers, and room air conditioners) and commercial and industrial products (*e.g.,* automatic commercial ice machines, vending machines, walk-in coolers, and walk-in freezers).[66] EPA is providing additional information in the memo *American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: Appliance Efficiency Standards,* referred to in this preamble as the ''Appliance Efficiency Standards memo''; this memo supports the Agency's consideration of the appliance efficiency standards subfactor and is available in the docket.

The DOE Appliance and Equipment Standards Program regularly develops and updates test procedures and appliance efficiency standards. Future revisions to existing appliance efficiency standards could impact what substitutes can be used in regulated products in specific sectors and subsectors. Therefore, EPA is consulting with DOE so both agencies are aware of the schedules for these separate but related actions. EPA has identified a list of applicable standards in relevant sectors and subsectors and which standards may be undergoing current revision in the Appliance Efficiency Standards memo. We understand that for redesign and testing of equipment, industry prefers that DOE and EPA regulations are synchronized where possible. Given DOE and EPA operate under separate mandates, that may not always be possible, but sharing information early can reduce inconsistencies such that, to the extent possible, the refrigerants used to set performance standards will be available under the technology transitions program. EPA also recognizes the potential to greatly increase climate protection by both reducing the GWP of substances used in the relevant applications (*e.g.,* construction foams, appliances foams, and refrigerants) covered by this action in the sectors and subsectors we are addressing and supporting energy efficiency in such applications.

EPA is seeking comment on to what extent the Agency should consider current and future minimum energy efficiency standards in taking into account appliance efficiency standards in the context of subsection (i)(4)(B). EPA further solicits information on the opportunities to further climate protection by supporting energy efficiency at the same time we are restricting the use of HFCs.

f. Contractor Training Costs

As part of the Agency's consideration of the availability of substitutes as directed by subsection (i)(4)(B), EPA is taking into account, to the extent practicable, available information on contractor training costs, including training related to substitutes for relevant sectors and subsectors (*e.g.,* certain RACHP, foam blowing, and fire suppression subsectors). EPA obtained some contractor training and exam cost data through a review of publicly available literature and from industry trade and training associations in these sectors as well as information submitted to EPA in petitions under subsection (i). EPA notes that it would not be feasible to obtain information and data on all available training programs and exams and our review represents an assessment to the extent practicable of information in relevant sectors and subsectors for contractor training costs. Some substitutes, including but not limited to flammable (A3 or B3), lower flammability (A2L or B2L), higher toxicity (B1, B2L, B2, or B3) refrigerants, and other substitutes with unique or different issues such as those operating at higher pressures than HFCs, may require specialized or additional training, knowledge, or expertise to ensure their safe handling and use. To the extent practicable, the Agency is considering the cost of trainings to contractors for handling products and equipment containing substitutes for HFCs or blends containing HFCs substitutes.

Manufacturers and trade organizations often provide training and certification beyond what is required under the regulations implementing sections 608 and 609 of the CAA for installing and servicing equipment in conjunction with the release of new equipment. This is not a new practice; however, as the transition to lower-GWP refrigerants continues, more technicians are expected to work with A2L and A3 refrigerants, and a variety of training and education resources are anticipated to include the incorporation of A2L and A3 refrigerants into existing curriculum. There are already courses, trainings, and conferences that focus on lower-GWP refrigerants available among product categories and across the country. Costs of trainings may be dependent on several factors, such as the organization providing the study materials, how the exam is administered, and the location.[67]

In the foam blowing and aerosols sectors, certain applications may require safety training. In particular, the Occupational Safety and Health Administration (OSHA) requires that contractors providing *in situ* installation of spray foams, foam insulation, and aerosols receive health and safety training regarding the hazards of working in confined spaces and procedures to avoid injury from fall hazards. OSHA issued a standard reflected in 29 CFR 1926 Subpart AA—Confined Spaces in Construction, which requires that employers provide employees free training to ensure that the employee understands the hazards of working in a confined space. Additional trainings and exams are

[65] For additional information, please refer to the U.S. Department of Energy's Appliance and Equipment Standards Program available at: *www.energy.gov/eere/buildings/appliance-and-equipment-standards-program.*

[66] For additional information and a complete list of products, please refer to the U.S. Department of Energy's website available at: *www.energy.gov/eere/buildings/standards-and-test-procedures.*

[67] In some cases, continued RACHP education may be required at the state level as a part of a state licensing requirement; training on using flammable refrigerants may be incorporated to fulfill this requirement.

available beyond the basic required safety training and may vary in costs depending on the level and amount of training a contractor obtains.

EPA is seeking comment on our consideration of contractor training costs in the context of subsection (i)(4)(B) in the sectors and subsectors covered in this proposed action.

g. Quantities of Regulated Substances Available From Reclaiming, Prior Production, or Prior Import

As part of the Agency's consideration of the availability of substitutes as directed by subsection (i)(4)(B), EPA is taking into account, to the extent practicable, information on quantities of HFCs from reclamation and stockpiles of previously produced or imported HFCs. EPA is providing additional information in the TSD *American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: Quantities Available from Reclaiming, Prior Production, or Prior Import;* this TSD supports the Agency's consideration of the quantities available from reclaiming, prior production, or prior import subfactor and is available in the docket HFCs available from stockpiles or reclamation can smooth transitions to alternative technologies and ensure that existing equipment can continue to be serviced. The Agency knows from its experience under the ODS phaseout the important role reclamation in particular plays by providing an ongoing supply of material. This is true not only for the RACHP sector but a similar approach is also used for the fire suppression sector. Some companies choose to stockpile substances and use them to smooth transition. EPA cannot estimate how much material will be stockpiled for a particular sector or subsector or by a particular company; however, the Agency can consider this approach as a general matter.

Information that EPA is considering includes HFC reclamation data submitted annually in accordance with the Clean Air Act section 608 reclamation program, codified at 40 CFR part 82, subpart F; reclamation, production, and import data reported under 40 CFR part 84, subpart A; [68] data gathered to support development of the AIM Act subsection (e) regulations contained in the docket for the 40 CFR part 84, subpart A rules; [69] and data reported to the GHGRP under subparts OO and QQ.

EPA is seeking comment on the likely quantities of regulated substances available from reclaiming and stockpiling and how that may be factored into the availability of substitutes in the sectors and subsectors covered in this proposed action. In addition, EPA is interested in information on stockpiles of used HFCs that do not require reclamation (*e.g.,* same ownership) that may also be stored by companies and how those stockpiles may be used.

3. How is EPA considering overall economic costs and environmental impacts, as compared to historical trends?

Subsection (i)(4)(C) directs the Agency to factor in, to the extent practicable, overall economic costs and environmental impacts, as compared to historical trends. The Act does not prescribe how EPA should carry out its consideration of this factor, nor does the statute clearly delineate what is meant by the phrase ''as compared to historical trends.'' In light of the ambiguity, we interpret the language of (i)(4)(C) as purposefully accommodating of many different types and degrees of analysis of economic costs and environmental impacts (including costs and impacts that may be difficult to quantify) in part because the nature of EPA's action when applying this provision can differ greatly depending on the circumstances.

Subsection (i)(4)(C) applies both to EPA's action on subsection (i) petitions and to EPA's rulemakings under subsection (i). Subsection (i) requires EPA to grant or deny petitions within 180 days of receipt, a time period that inherently limits the scope and depth of any potential analysis under subsection (i)(4)(C). EPA's timeframe for promulgating a rule subject to a granted petition is two years from the date of a petition grant, and in undertaking a rulemaking, whether by negotiated rulemaking or not, EPA will undoubtedly perform more in-depth analysis of economic costs and environmental impacts than we would in the more abbreviated statutory period allotted for petition decisions. As worded, particularly read in light of subsection (i)(4)'s acknowledgement that consideration of some factors will be limited by practicability (*i.e.,* ''to the extent practicable''), the provision has flexibility to permit EPA to tailor its consideration of this factor accordingly.

We note also that subsection (i)(4)(C) would apply to cases where EPA is considering a broad swath of restrictions—such as this proposed action, which if finalized would cover more than 40 sectors and subsectors—as well as cases where EPA is contemplating a much more limited set of restrictions—potentially for only one sector or subsector. There may be instances, then, where it is appropriate for EPA to prepare detailed analyses such those in the *Costs and Environmental Impacts* TSD, but also times when new analyses of similar detail would be unnecessary or inappropriate. As discussed in this section, EPA considered several different sources of information when factoring in subsection (i)(4)(C) to EPA's consideration of potential use restrictions. This information included but was not limited to the *Costs and Environmental Impacts* TSD, information previously developed by EPA concerning HFCs and transitions, our experience with the ODS program, industry reports, information developed by the TEAP, the Montreal Protocol's Science Assessments, and other research.

It is also not clear from the plain language of the statute what information EPA should consider when thinking about ''historical trends,'' and how EPA should ''compare'' ''overall'' economic cost and environmental impact information about newly contemplated restrictions to those trends. Here too we think the ambiguity of these phrases accommodates consideration of a variety of information and comparisons depending on the circumstances and the available information.

In undertaking this proposed action, EPA does not yet have historical overall economic cost and environmental impact trends for previous use restrictions, or transitions from HFCs to substitutes, under subsection (i) to compare with the overall economic costs and environmental impacts of the contemplated restrictions. However, we think it is practicable and reasonable to in part interpret our obligation to factor in the considerations under subsection (i)(4)(C) for this proposal by looking at the overall economic costs and the anticipated environmental impacts of our proposed restrictions as compared to a scenario where historical trends had continued into the future, that is, a projection of ''business as usual'' conditions. For purposes of this proposal, we think a reasonable reading of that scenario is conditions that would occur if only the Allocation Framework Rule and the proposed 2024 Allocation Rule were in effect, and the analysis in

[68] In addition to quarterly data, under 40 CFR 84.31, HFC producers, importers, exporters, application-specific allowance holders, reclaimers, and fire suppressant recyclers must annually report the quantity of each regulated substance held in inventory as of December 31 of each year. As this information becomes available in future, it can inform EPA's consideration of this factor.

[69] Available at *www.regulations.gov,* in Docket ID No. EPA–HQ–OAR–2021–0044.

the *Costs and Environmental Impacts* TSD therefore uses as a baseline what would occur absent these proposed restrictions. As noted, we do not think subsection (i)(4)(C) requires a specific type of analysis, like the one EPA has conducted for purposes of this *Costs and Environmental Impacts* TSD, and we anticipate that the Agency could consider this (i)(4) factor using a different type of analysis in the future.

Additionally, as this is the first set of proposed restrictions under subsection (i) and, if finalized, would result in the first requirements under the AIM Act to transition away from certain regulated substances in certain sectors and subsectors, we also think information about impacts to costs from historical comparable technology transitions in similar contexts is appropriate. As noted elsewhere, HFCs are used mainly in the same sectors and subsectors where ODS were used. EPA therefore has considered the overall economic costs and environmental impacts of actions taken under the CAA title VI regulations on ODS in a memo [70] available in the docket.

EPA acknowledges that the ODS phaseout and transitions away from HFCs as a result of use restrictions each have their own unique regulatory features and technological transitions at play, potentially leading to different overall economic impacts and environmental benefits. The memo discussing the costs and environmental impacts of the ODS phaseout is included as supplemental information and as a relevant benchmark, as the transition to HFC substitutes will impact many of the same industries and entail—in some cases—similar technological shifts. This same information has been made available by EPA previously.

One key historical trend observed during the ODS phaseout, and that may be relevant to similar technology transitions for HFCs during the HFC phasedown, is that technology transitions did not necessarily drive up the cost of products to the consumer or hurt the performance of products. A clear example of this was discussed in a 2018 report of the TEAP.[71] From 1972 through 2015, household refrigerators sold in the United States underwent several design changes in response to regulations requiring transition away from ODS refrigerant, ODS-containing insulation foam, and increases in energy efficiency. Over that time, the average capacity of refrigerators sold in the United States also grew to accommodate consumer preferences. Even as refrigerators became larger, more energy efficient, and transitioned away from use of ODS, the average price fell in real dollars. Consumers not only benefitted from the lower initial purchase price, but the greater energy efficiency also reduced consumers' electricity costs. This example, and a similar trend seen in household unitary AC units, are discussed in more detail in the EPA report *American Innovation and Manufacturing Act of 2019: Compliance and Consumer Cost Estimates,* which can be found in the docket.

As described in the memo that summarizes the costs of the ODS phaseout,[72] the most comprehensive analysis was in a 1999 peer-reviewed report to Congress. In that report, we summarized the costs of the allowance allocation and reductions for CFCs, HCFCs, halons, and methyl chloroform to be $18 billion (7 percent discount rate) to $56 billion (2 percent discount rate) in 1990 dollars.[73] It was also noted that the transition to more energy efficient air conditioning using alternatives to HCFC–22 could lower this cost by $16.8 billion in 1990 dollars.[74] As opposed to this net cost, the *Costs and Environmental Impacts* TSD indicates that the transitions envisioned would yield a net savings through 2050 of $4.2 billion (7 percent discount rate) to $8 billion (3 percent discount rate) in compliance costs.

The primary goal of the ODS phaseout was to protect the ozone layer in accordance with title VI of the CAA and the Montreal Protocol, whereas the primary purpose of this proposed rule is to restrict the use of high-GWP HFCs, making the benefits difficult to compare. However, the phaseout of ODS also provided global warming benefits, as most ODS are also high-GWP greenhouse gases, as indicated by the exchange values for the ODS that are listed in subsection (e)(1)(D) of the AIM Act.[75] Although such benefits have not been calculated specifically for the United States (though as one of the largest producers and consumers of ODS it is possible to make certain assumptions), the benefits can be significant given the high GWPs of the most common ODS.

Other sources of information the Agency has available for our consideration include industry commissioned studies (see for example JMS Consulting in partnership with INFORUM),[76] journal articles, and reports provided to the Montreal Protocol from the SAP and the TEAP.

EPA is soliciting comment on its interpretations of subsection (i)(4)(C) and its consideration of economic costs and environmental impacts, as compared to historical trends, in the context of this proposed rulemaking.

4. How is EPA considering the remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3) of the AIM Act?

Subsection (i)(4)(D) directs the Agency to factor in, to the extent practicable, the remaining phasedown period for regulated substances under the final rule issued under subsection (e)(3) of the AIM Act, if applicable. Accordingly, for this proposal, EPA notes that we are at the beginning stages of the overall HFC phasedown, having promulgated the Allocation Framework Rule (86 FR 55116, October 5, 2021) in 2021. In that rule, EPA established the allocation program under subsection (e) of the AIM Act, which is codified at 40 CFR part 84, subpart A. One of the key provisions under subsection (e) requires EPA to phase down the consumption and production of the statutorily listed HFCs on an exchange value-weighted basis according to the schedule listed in the table in subsection (e)(2)(C) of the AIM Act. The quantity of allowances available for allocation for each calendar year decreases over time according to the statutory phasedown schedule.

EPA views this proposed action on restricting the use of HFCs in specific sectors and subsectors as supportive of the overall phasedown schedule. While this rule is being promulgated under a separate statutory provision under the AIM Act, the proposed restrictions on the use of HFCs in sectors and subsectors is expected to have a complementary effect on meeting the HFC phasedown schedule by facilitating necessary transitions to lower-GWP substitutes.

[70] See "*Overview of CFC and HCFC Phaseout*" document in the docket.

[71] Decision XXIX/10 Task Force Report on Issues Related to Energy Efficiency while Phasing Down Hydrofluorocarbons, Technical and Economic Assessment Panel, UNEP, May 2018. Available at: *https://ozone.unep.org/sites/default/files/2019-04/TEAP_DecisionXXIX-10_Task_Force_EE_May2018.pdf.*

[72] *Consumer Cost Impacts of the U.S. Ratification of the Kigali Amendment,* JMS Consulting in partnership with INFORUM, November 2018. Available in the docket.

[73] Approximately $36 billion and $111 billion, respectively, in 2020 dollars.

[74] Approximately $33.3 billion in 2020 dollars.

[75] Velders, Guus JM, et al. "The importance of the Montreal Protocol in protecting climate." *Proceedings of the National Academy of Sciences* 104.12 (2007): 4814–4819.

[76] *Consumer Cost Impacts of the U.S. Ratification of the Kigali Amendment,* JMS Consulting in partnership with INFORUM, November 2018. Available in the docket.

Imposing restrictions on the use of HFCs, and considering the timing of those restrictions, is expected to play a role in reducing the demand for HFCs as well as support innovation. The production and consumption caps established by the AIM Act follow a stepwise reduction schedule, and EPA anticipates new substitutes and technologies will continue to emerge as the reductions in the production and consumption caps continue. If EPA is aware of information indicating that certain sectors and subsectors are well positioned to transition to new substitutes and technologies, then proposing restrictions on the use of HFCs in those sectors and subsectors would be consistent with subsection (i) and, if finalized, such restrictions could also support the overall production and consumption phasedown. Similarly, the Agency notes that title VI of the CAA provided for prohibitions on the sale or distribution in interstate commerce of certain products under section 610 and for additional restrictions on use of certain ODS under section 605(a). These restrictions were supportive of the ODS phaseout. For example, most of the nonessential products bans under section 610 were established at the very beginning of the ODS phaseout program—ahead of the overall CFC phaseout by a few years and ahead of the HCFC final phaseout by a few decades. By banning the use of certain ODS where substitutes were available, early transitions accrued additional environmental benefits and supported the overall economy-wide transition by removing uses of controlled substances that were no longer necessary. At the time, in discussing some of the statutory criteria to be considered in determining whether a product was nonessential, EPA noted that ''where substitutes are readily available, the use of controlled substances could be considered nonessential even in a product that is extremely important.'' (58 FR 4768, January 15, 1993).

EPA seeks comment on the relationship between the overall HFC phasedown and this action being proposed under subsection (i).

F. For which sectors and subsectors is EPA proposing to establish restrictions on the use of HFCs and blends containing HFCs?

1. How did EPA determine the degree of the proposed restrictions for each sector and subsector?

AIM Act subsection (i)(1) grants EPA authority to restrict by rule the use of a regulated substance in the sector or subsector in which the regulated substance is used, and these restrictions may be exercised ''fully, partially, or on a graduated schedule.'' In determining the degree of the proposed restrictions—*e.g.,* level, how partially or fully to restrict the use, and on what schedule—EPA looked to the factors in subsection (i)(4). Specifically, we interpret subsection (i)(4) as directing EPA to balance a number of factors in establishing the level of the contemplated use restriction, and we describe in this section the guiding principles and methodology EPA employed in our consideration of those factors in developing the restrictions proposed in this action. In short, EPA selected the degree of restriction for each sector or subsector by weighing the following considerations: maximizing environmental benefit while ensuring adequate availability of substitutes (as informed by the (i)(4)(B) subfactors) and with consideration of how this proposal comports with the overall economic costs and environmental benefits compared to historical trends. With respect to all of our information and analysis we strive to use best available data. We are also mindful of the HFC phasedown schedule in ensuring that the proposed use restrictions would not interfere with, and instead would support, that schedule.

As noted in section VII.B of this preamble, EPA is proposing restrictions on the use of HFCs by, for the most part, setting GWP limits. In that section, EPA highlights the benefits of using GWP limits, including achieving environmental benefits, smoothing the transition from higher-GWP substances, supporting innovation, providing regulatory certainty, and harmonizing with approaches taken by other governments in establishing similar requirements. However, we note that if EPA were to finalize use restrictions under a substance-specific approach, the same principles and methodology employed here would apply equally, as the GWP limits for each sector and subsector can be translated to restrict specific regulated substances and blends used in the named sectors and subsectors.

Because this proposed rulemaking was requested by numerous stakeholders, representing a broad range of interests (regulated industry, environmental and public health organizations, and state and local governments), EPA considered the requested use restrictions in the petitions—either in the form of GWP limits or specific substances to be restricted—as a starting point for the level of our proposed restrictions. In some cases, petitioners provided information about substitutes that are already in use or would soon be ready to be in use in the affected sectors and subsectors and attested to the achievability (technologically, regulatory, economic, and otherwise) of certain substitutes. The substitutes discussed in the petitions and supporting information typically had lower GWPs, and thus reduced adverse impacts on climate, compared to the regulated substances for which a use restriction was requested. Many of the petitioners are the entities (or trade associations representing those entities) developing substitutes or manufacturing products using substitutes. As such, they are in many instances well-positioned and incentivized to gather and have access to information regarding many of the factors in subsection (i)(4), including the best available data on many if not most of the subfactors in subsection (i)(4)(B).

In addition, the impetus for this proposed rulemaking, in part, is to address the granted petitions requesting restrictions on the use of HFCs in certain sectors and subsectors. Therefore, the requested restrictions, including specific substances or GWP limits and the available substitutes, are a natural starting point for the Agency's inquiry.

Subsection (i)(4) requires that EPA take into account, to the extent practicable, the factors described in section VII.E of this preamble. In following this statutory directive, EPA is considering the (i)(4) factors collectively, with no single (i)(4) factor (or subfactor) driving the proposed restrictions for any sector or subsector. Collective consideration of the (i)(4) factors is consistent with the statutory text, which directs EPA to account for all the factors, to the extent practicable, in carrying out a rulemaking under subsection (i), and which does not state that one factor should carry more weight than the others. Further, accounting for the (i)(4) factors together enables EPA to take a holistic approach in facilitating transition to substitute technology, one that considers the availability of substitutes, overall economic costs and environmental impacts, as compared to historical trends, and the HFC phasedown schedule codified by the Allocation Framework Rule.

To that end, our approach to selecting the level and timing of each proposed use restriction for the sectors and subsectors in this proposed action was to balance the factors provided in (i)(4): again, to maximize environmental benefit while ensuring adequate availability of substitutes (as informed by the (i)(4)(B) subfactors) and with

consideration of how this proposal comports with the overall economic costs and environmental benefits compared to historical trends. With respect to all of our information and analysis we strive to use best available data. We are also mindful of the HFC phasedown schedule in ensuring that the proposed use restrictions would not interfere with, and instead would support, that schedule. We are cognizant that the phasedown schedule could carry more significance as a factor in future rulemakings under subsection (i) when EPA is further along in the HFC phasedown.

The direction in subsection (i)(4)(C) to factor in overall economic costs and environmental impacts as compared to historical trends does not have a clear meaning in the context of selecting the degree of a restriction for a given sector or subsector. The provision's focus on an ''overall'' comparison makes direct application of this factor in setting a level of restriction for a specific sector or subsector less practicable. However, we think subsection (i)(4)(C)'s focus on ''economic costs'' and ''environmental impacts'' still provides direction to the Agency that cost and environmental considerations are relevant factors for EPA to consider in setting the level of a use restriction under subsection (i), and we address how EPA did so in the following paragraphs.

For this proposal, in factoring in environmental impacts, our aim was to propose GWP limits for each sector or subsector at a level that was as low as we thought supportable while considering the other primary considerations under subsection (i), specifically, availability of substitutes and cost. We think it is reasonable to prioritize maximizing the climate change benefits of restricting the regulated substances that are the focus of this proposed rule, given that these impacts are and have been one of the central concerns with the use of HFCs. We also note that much of the information relied upon in our analysis of available substitutes comes from EPA's SNAP program, which evaluates and identifies as ''acceptable'' those substances that reduce overall risk to human health and the environment, as well as the TEAP reports which speak to human health and environmental considerations, the granted petitions, and information from state and foreign government regulations. Therefore, in selecting the proposed levels of restrictions for each sector and subsector, we attempted to set the GWP limit at the lowest level that will provide a sufficient range of substitutes for applications within a subsector. In addition, EPA is proposing four GWP limits across all the sectors and subsectors—*i.e.,* 0 GWP, 150 GWP, 300 GWP, and 700 GWP. This approach has a number of advantages over a methodology that tightly tailors the GWP limit for each subsector to the specific GWPs of the currently identified available substitutes for a particular sector or subsector. Establishing limits at these regular intervals (*e.g.,* applying a 300 GWP limit for multiple subsectors, rather than GWP limits of 237, 258, and 290 based on the particular substitutes currently available in specific subsectors) avoids minor discrepancies in calculating GWP, promotes development of new variations on substitutes that are still within the permissible range, and enhances ease of implementation of the restrictions for regulated parties, consumers, and enforcement.

As noted in section VII.E.2 of this preamble, EPA developed a non-exhaustive list of substitutes that can be used in lieu of the regulated substances that EPA is proposing to restrict for each sector and subsector subject to this proposal. We also note that, relevant to the direction in (i)(4)(C)'s direction to factor in, to the extent practicable, overall environmental impacts as compared to historical trends, we anticipate that the proposed use restrictions would achieve an average annual additional [77] emission reduction of 5 to 54 $MMTCO_2e$, and an average annual additional consumption reduction of 28 to 49 $MMTCO_2e$, from 2025 through 2050. See *Costs and Environmental Impacts* TSD.

To ensure adequate availability of substitutes, we looked at a range of information relevant to the subfactors provided in subsection (i)(4)(B) from a variety of sources (see section VII.E.1 of this preamble). In general, where we were able to identify multiple substitutes that could be used in a sector or subsector (taking into consideration the various (i)(4)(B) subfactors to the extent practicable), that weighed in favor of prohibiting the use of certain HFCs and blends that use HFCs that had GWPs above the level of the available substitutes in a sector or subsector. In the following sections, we provide detailed information regarding the availability of substitutes for each sector and subsector.

Our methodology for setting the levels of the proposed use restrictions also factored in considerations of cost, both in identifying availability of substitutes and in assessing overall costs of the levels of the proposed restrictions. First, some of the subfactors in subsection (i)(4)(B) for the Agency to take into account when determining ''availability'' are explicitly or implicitly related to cost (*e.g.,* consumer costs). Subfactors that explicitly relate to cost include commercial demands (there would be no demand for a substitute that caused a product to be so costly as to be unmarketable), consumer costs, affordability for residential and small business consumers, and contractor training costs. Other subfactors that are not explicitly related to cost contain implicit considerations of cost. For example, a company generally would not invest in demonstrating that use of a substitute is technologically achievable in a sector or subsector if the use of that substitute was so cost prohibitive that it would never actually be adopted. The Agency factored in these cost subfactors to the extent practicable when considering availability of substitutes.

Second, subsection (i)(4)(C) also specifically directs EPA to factor in, to the extent practicable, overall economic costs as compared to historical trends, and as discussed above, the Agency has considered numerous sources of information as we developed this proposal. With respect to the proposed restrictions in this action, to inform our consideration of overall economic costs as compared to historical trends, we propose to look to our findings in the *Costs and Environmental Impacts* TSD summarizing the economic cost of the proposed restrictions. As discussed in that TSD, we anticipate that the incremental economic cost of the proposed restrictions would result in a savings to the regulated industry, *i.e.,* that complying with the proposed use restrictions and transitioning from higher-GWP regulated substances to lower GWP substitutes would, on the whole, reduce costs for industry. For additional information, see the *Costs and Environmental Impacts* TSD provided in the docket.

We take comment on these guiding principles and methodology to establishing use restrictions under subsection (i) and on our application of this methodology in the proposed restrictions for each sector and subsector in this action.

2. Summary of Proposed Restrictions on the Use of HFCs

Table 4 lists the sectors and subsectors for which EPA is proposing to establish restrictions, the type of restriction, and the proposed compliance date. For each sector and

[77] These reductions would be in addition to the consumption reductions from the Allocation Framework Rules.

subsector, sections VII.F.3 through VII.F.5 of this preamble provide a description of the sector or subsector, a summary of information from granted petitions, and discussion on EPA's proposed use restriction.

TABLE 4–PROPOSED HFC RESTRICTIONS AND COMPLIANCE DATES BY SUBSECTOR

Sectors and subsectors	Proposed GWP limit or prohibited substance	Compliance date
Refrigeration, Air Conditioning, and Heat Pump		
Industrial process refrigeration systems with refrigerant charge capacities of 200 pounds or greater.	150	January 1, 2025.
Industrial process refrigeration systems with refrigerant charge capacities less than 200 pounds.	300	January 1, 2025.
Industrial process refrigeration, high temperature side of cascade systems.	300	January 1, 2025.
Retail food refrigeration—stand-alone units	150	January 1, 2025.
Retail food refrigeration—refrigerated food processing and dispensing equipment.	150	January 1, 2025.
Retail food refrigeration—supermarket systems with refrigerant charge capacities of 200 pounds or greater.	150	January 1, 2025.
Retail food refrigeration—supermarket systems with refrigerant charge capacities less than 200 pounds charge.	300	January 1, 2025.
Retail food refrigeration—supermarket systems, high temperature side of cascade system.	300	January 1, 2025.
Retail food refrigeration—remote condensing units with refrigerant charge capacities of 200 pounds or greater.	150	January 1, 2025.
Retail food refrigeration—remote condensing units with refrigerant charge capacities less than 200 pounds.	300	January 1, 2025.
Vending machines	150	January 1, 2025.
Cold storage warehouse systems with refrigerant charge capacities of 200 pounds or greater.	150	January 1, 2025.
Cold storage warehouse systems with refrigerant charge capacities less than 200 pounds.	300	January 1, 2025.
Cold storage warehouse—high temperature side of cascade system.	300	January 1, 2025.
Ice rinks	150	January 1, 2025.
Automatic commercial ice machines—self-contained with refrigerant charge capacities of 500 grams or lower.	150	January 1, 2025.
Automatic commercial ice machines—self-contained with refrigerant charge capacities more than 500 grams.	R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B, R–407A, R–410A, R–442A, R–417C, R–407F, R–437A, R–407C, RS–24 (2004 formulation), HFC–134a.	January 1, 2025.
Automatic commercial ice machines—remote	R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B.	January 1, 2025.
Transport refrigeration—intermodal containers	700	January 1, 2025.
Transport refrigeration—road systems	R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B.	January 1, 2025.
Transport refrigeration—marine systems	R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B.	January 1, 2025.
Residential refrigeration systems	150	January 1, 2025.
Chillers—industrial process refrigeration	700	January 1, 2025.
Chillers—comfort cooling	700	January 1, 2025.
Residential and light commercial air conditioning and heat pump systems.	700	January 1, 2025.
Residential and light commercial air conditioning—variable refrigerant flow systems.	700	January 1, 2026.
Residential dehumidifiers	700	January 1, 2025.
Motor vehicle air conditioning—light-duty Passenger Vehicles.	150	Model year 2025.
Motor vehicle air conditioning—medium-duty passenger vehicles.	150	Model year 2026.
Motor vehicle air conditioning—heavy-duty pick-up trucks	150	Model year 2026.
Motor vehicle air conditioning—Complete heavy-duty vans	150	Model year 2026.

TABLE 4—PROPOSED HFC RESTRICTIONS AND COMPLIANCE DATES BY SUBSECTOR—Continued

Sectors and subsectors	Proposed GWP limit or prohibited substance	Compliance date
Motor vehicle air conditioning—Nonroad vehicles	150	Model year 2026.
Foam blowing		
Polystyrene—extruded boardstock and billet	150	January 1, 2025.
Rigid polyurethane and polyisocyanurate laminated boardstock.	0	January 1, 2025.
Rigid polyurethane—slabstock and other	150	January 1, 2025.
Rigid polyurethane—appliance foam	150	January 1, 2025.
Rigid polyurethane—commercial refrigeration and sandwich panels.	150	January 1, 2025.
Rigid polyurethane—marine flotation foam*	150	January 1, 2025.
Rigid polyurethane—low pressure, two-component spray foam.	150	January 1, 2025.
Rigid polyurethane—high-pressure two-component spray foam.	150	January 1, 2025.
Rigid polyurethane—one-component foam sealants	150	January 1, 2025.
Flexible polyurethane	0	January 1, 2025.
Integral skin polyurethane	0	January 1, 2025.
Polystyrene—extruded sheet	0	January 1, 2025.
Polyolefin	0	January 1, 2025.
Phenolic insulation board and bunstock	150	January 1, 2025.
Aerosols		
Aerosol products*	150	January 1, 2025.

* As described in greater detail in section VII.C of this preamble, EPA is proposing an exemption for certain applications as long as they are receiving application-specific allowances under subsection (e)(4)(B) of the Act, including: as a propellant in metered dose inhalers; in the manufacture of defense sprays; and in the manufacture of structural composite preformed polyurethane foam for marine use and trailer use.

3. Refrigeration, Air Conditioning, and Heat Pump

Subsectors in the RACHP sector typically use a refrigerant in a vapor compression cycle to cool and/or dehumidify a substance or space, like a refrigerator cabinet, room, office building, or warehouse. Based on EPA's consideration of the factors listed in subsection (i)(4) of the AIM Act, as discussed in section VII.E of this preamble, EPA is proposing the restrictions on the use of HFCs in the following subsectors:

a. Industrial Process Refrigeration (IPR)

Background on Industrial Process Refrigeration

''Industrial process refrigeration'' systems are used to cool process streams at a specific location in manufacturing and other forms of industrial processes and applications used in, for example, the chemical production, pharmaceutical, petrochemical, and manufacturing industries. This also includes appliances used directly in the generation of electricity and for large scale cooling of heat sources such as data centers and data servers. Specialized refrigerated laboratory equipment, such as that used in the pharmaceutical industry, may fall under this subsector if it operates at temperatures above −62 °C (−80 °F)—that is, it is not very low temperature refrigeration equipment.

IPR systems are complex, customized systems that are directly linked to the industrial process, meaning the refrigerant leaving the condenser and metering device is delivered directly to the heat source before returning to the compressor. Where one appliance is used for both IPR and other applications, it is considered an IPR system if 50 percent or more of its operating capacity is used for IPR. Such IPR appliances could be cooling a room or building in which the industrial process is located, for instance if 50 percent or more of its capacity is to cool manufacturing or other processing lines within the room or building. Cooling or IPR that involves using a chiller, *i.e.,* to circulate a secondary fluid to the point at which heat is removed from the process, or to cool a room or building as explained in this section, is regulated as a chiller (see section VII.F.3.h of this preamble below). IPR not using a chiller is regulated as IPR equipment and is discussed here.

Many food products require refrigeration during the production process. EPA is considering the application of refrigerating equipment used during the production of food and beverages to fall under ''industrial process refrigeration'' except where using a chiller. In other words, if the food production process requires cooling and that cooling is done directly by a refrigerant, either at the point where cooling is required or to cool a room or building in which the cooling is required, for purposes of this proposed rule we consider the equipment to fall under the IPR subsector; whereas if a chiller is used to cool a secondary fluid (*e.g.,* water) which is used to provide the required cooling, we consider the appliance as part of the chiller subsector. The IPR subsector would include all equipment and operations that use a refrigerant to make and prepare food that is not immediately available for sale (or supply, if the product is not ''sold'') to the ultimate consumer and would require shipping or delivering it, possibly through intermediate points, to the point where such sale would occur. The IPR subsector could include facilities where food is processed and packaged by the food producer. An example could be a meat processor that prepares and packages individual cuts of meat within a single facility or building while maintaining the required temperatures within that facility or building. Although such facilities may be designed in a fashion similar to a cold storage warehouse, the fact that items are being processed by the food producer indicates that the application falls in the IPR subsector. However, if a

food producer operates a refrigerated storage area solely for the holding of already packaged products, and possibly packing such products in larger containers or bundles for shipment, that application would fall under the cold storage warehouse subsector.

Another example of an IPR system is a ''blast cooler'' or ''blast freezer.'' In this context ''blast cooler'' or ''blast freezer'' refers to a type of equipment in which cold air is supplied and circulated rapidly to a food product, generally to quickly cool or freeze a product before damage or spoilage can occur. This is the same description as the Agency has previously used for this equipment. (See 80 FR 42901, July 20, 2015). Such equipment might be used as part of a food production line in an industrial setting. They also can be placed separately at public facilities including hospitals, schools, restaurants, and supermarkets. These public facilities might use the blast chiller on products that they will store for later use after they receive products from a vendor or that they cook or prepare as part of their operations. Such units might also be placed near entranceways to cold storage warehouses, for instance to receive food shipped refrigerated at one temperature and bring it down to a lower temperature for storage.

IPR systems typically have large refrigerant charge to satisfy the significant cooling demands throughout the facility. Historically, facilities have commonly used R–717, hydrocarbons, CFCs, HCFCs and HFCs including but not limited to R–12, R–22, R–404A, R–507, and R–134a.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Industrial Process Refrigeration

EPA granted six petitions that requested restrictions on the use of HFCs and blends containing HFCs for IPR equipment excluding chillers, which were submitted by EIA, CARB, IIAR (two petitions), and AHRI (two petitions). All petitioners separated chillers used for IPR into a different category.

EIA's and CARB's petitions requested that EPA establish a GWP limit of 150 for HFCs used in new IPR equipment by January 1, 2025. CARB requested that the GWP limit apply to IPR equipment containing more than 50 pounds of refrigerant.

IIAR submitted two petitions regarding new IPR equipment. One of IIAR's petitions requested that EPA establish a GWP limit of 150 for HFCs used in new IPR equipment with refrigerant charge capacities greater than 50 pounds by January 1, 2022. In a subsequent petition, IIAR requested a GWP limit of 150 for new IPR equipment with refrigerant charge capacities greater than 200 pounds, by January 1, 2026. In this second petition, IIAR also requested that EPA establishes a GWP limit of 300 for new IPR equipment with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems by January 1, 2026.

AHRI also submitted two petitions regarding IPR equipment. One of AHRI's petitions requested that EPA establish a GWP limit of 300 for HFCs used in new IPR equipment by January 1, 2026,[78] but requested that medical, scientific, and research applications be exempted. Another AHRI petition requested that EPA establish a GWP limit of 150 for new equipment in IPR with refrigerant charge capacities greater than 200 pounds by January 1, 2026. For new IPR equipment with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems, AHRI requested a GWP limit of 300 by January 1, 2026.

Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for industrial process refrigeration?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 150 or greater in IPR systems with refrigerant charge capacities greater than 200 pounds beginning January 1, 2025. For IPR systems with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems, EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 300 or greater, beginning January 1, 2025. These proposed GWP limits would apply to new equipment used in IPR other than chillers used for IPR. Chillers used for IPR are discussed in section VII.F.3.h of this preamble.

A cascade system is a design option which consists of two independent refrigeration systems that share a common cascade heat exchanger. They are often employed in applications when the required temperature is very low. Each system of a cascade system uses a different refrigerant that is most suitable for the given temperature range. High temperature systems, or the ''high temperature side,'' have typically used HFCs as a refrigerant; however, it is technologically achievable and has become more common to use R–717 in the high temperature side. For low temperature systems, or the ''low temperature side,'' low boiling refrigerants such as R–744 and R–508B can be used. Considerations for the choice of refrigerant on the high or low temperature side of the cascade systems are influenced by many factors including, but not limited to, a refrigerant's toxicity and flammability, its temperature glide, and its suitability to lower temperature applications. In our consideration of safety and building codes under subsection (i)(4)(B), EPA understands that use of flammable or toxic refrigerants, such as R–717, on the high temperature side of a cascade may be limited in certain circumstances (*e.g.,* in areas that are heavily populated based on building codes and/or standards). Therefore, EPA is proposing a higher GWP limit of 300 for HFCs used in the high temperature side of cascade systems to expand the refrigerant options that can comply with local building codes and industry safety standards. EPA is proposing a GWP limit of 150 for HFCs used in the low temperature side of cascade systems based on its consideration of the (i)(4) factors, noting in particular that there are a number of substitutes available that can meet this proposed limit for this part of the cascade system.

Similarly, EPA is proposing to establish two different GWP limits for equipment used in IPR, based on the refrigerant charge capacity of the system. This distinction is consistent with information provided by certain petitioners and EPA's understanding of technical challenges that these smaller capacity systems currently face. Specifically, for smaller-footprint applications, the use of A2Ls (lower flammability refrigerants) is limited due to safety standards ANSI/ASHRAE Standard 15–2019 and UL 60335–2–89.[79] [80] The two standards, which are used to update building codes, set charge limits to under 200 pounds for

[78] The AHRI petition submitted on April 13, 2021, available at *www.regulations.gov* in Docket ID No, EPA–HQ–OAR–2021–0289, requested a 1,500 GWP limit with a compliance date of January 1, 2024, for new IPR equipment. The AHRI petition received by EPA on August 19, 2021, requested a 300 GWP limit with a compliance date of January 1, 2026. As EPA explains in section VII.D.2 of this preamble, EPA is treating AHRI's August 19, 2021, petition as an addendum to their April 13, 2021, petition.

[79] ASHRAE. (2019). *ANSI/ASHRAE Standard 15–2019: Safety Standard for Refrigeration Systems.*

[80] UL Standard. (2021). Household and Similar Electrical Appliances—Safety—Part 2–89: Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor (Standard 60335–2–89, Edition 2).

applications in smaller floor areas.[81] For example, if an application subject to these standards required 100 pounds charge in a 1,000 square foot area, A2L refrigerants would not be permitted. The proposed higher GWP limit of 300 GWP for smaller refrigerant charge systems would enable the use of a wider set of available substitutes to manage safety (in particular, flammability and toxicity), efficiency, capacity, temperature glide, and other performance factors. Systems with larger refrigerant charge capacities *i.e.* greater than 200 pounds charge) are expected to be less space-constrained, so system designers can accommodate a narrower set of lower-GWP substitutes below 150 GWP, as demonstrated by the widespread use and commercial demands of lower-GWP substitutes in these systems. Therefore, EPA is proposing a lower GWP limit of 150 for HFCs used in new equipment with refrigerant charge greater than 200 pounds.

For its consideration of availability of substitutes under subsection (i)(4)(B), EPA identified several substitutes[82] which are available in place of the higher-GWP substances that EPA is proposing to prohibit. These available substitutes include HCFO–1224yd(Z) (GWP 1), R–717 (GWP 0), R–1270 (GWP 2), R–290 (GWP 3), R–600 (GWP 4), HCFO–1233zd(E) (GWP 3.7), R–471A (GWP 139), R–454C (GWP 146), and, for smaller capacity systems, and R–454A (GWP 237). EPA is aware of a statement by one stakeholder that R–717 and hydrocarbons (R–600, R–1270, R–290) are 90–95 percent of the market share for IPR systems in 2019, indicating the technological achievability and commercial demands of systems using available substitutes.[83]

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs used in IPR systems with refrigerant charge capacities greater than 200 pounds, and a GWP limit of 300 or greater for HFCs and blends containing HFCs used in IPR systems with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems. EPA is considering whether a GWP limit lower than the proposed limit of 300 would be appropriate for systems with smaller refrigerant charge capacities (*i.e.,* less than 200 pounds). Accordingly, EPA seeks comment on other technical and design challenges that exist for such systems to use refrigerants with GWPs less than 150, and strategies that can be employed to mitigate these challenges.

b. Retail Food Refrigeration and Vending Machines

Background on Retail Food Refrigeration and Vending Machines

Retail food refrigeration is characterized by storing and displaying, generally for sale, food and beverages at different temperatures for different products (*e.g.,* chilled and frozen food). The designs and refrigerating capacities of such equipment vary widely.

Vending machines are a type of self-contained system used to sell a variety of products, including cold drinks in cans or bottles, ice cream, milk, cold drinks in cups, and perishable food items (*e.g.,* fruit, prepared sandwiches). Hot beverages may also be provided via a heat-pump or through recycled waste heat from the refrigeration cycle, particularly for dual hot/cold beverage vending machines. Vending machines are a subset of commercial refrigeration that EPA is considering as a separate subsector due to differences in where such equipment is placed and the additional mechanical and electronic components required to accept payment, provide the selected product, and prevent theft or damage from vandalism.

Retail food refrigeration is composed of four main categories of equipment, and EPA is treating these categories as separate subsectors under the technology transitions program: stand-alone equipment; refrigerated food processing and dispensing equipment; remote condensing units; and supermarket systems, the latter often in designs referred to as multiplex or centralized refrigeration systems. Stand-alone units in retail food refrigeration (hereafter, ''stand-alone units'') consist of refrigerators, freezers, and reach-in coolers (either open or with doors) where all refrigeration components are integrated and, for the smallest types, the refrigeration circuit is entirely brazed or welded. These systems are charged with refrigerant at the factory and typically require only an electricity supply to begin operation. Under the technology transitions program, EPA intends to distinguish medium-temperature stand-alone units from low-temperature stand-alone units. Medium-temperature stand-alone units maintain a temperature above 32 °F (0 °C). Most are typically designed to maintain products at temperatures roughly between 32 °F (0 °C) and 41 °F (5 °C). Low-temperature stand-alone units designed to maintain products at temperatures roughly between −40 °F (−40 °C) and 32 °F (0 °C) (*i.e.,* freezers). Today, HFC–134a is the most commonly used refrigerant in self-contained systems, with R–404A also commonly used in low temperature applications (*e.g.,* freezers, ice machines) and some high-capacity systems.

With respect to the second category of equipment to be included under retail food refrigeration, refrigerated food processing and dispensing equipment, the Agency considers equipment designed to make or process cold food and beverages that are dispensed via a nozzle, including soft-serve ice cream machines, ''slushy'' iced beverage dispensers, and soft-drink dispensers, to be a separate subsector from stand-alone units. Refrigerated food processing and dispensing equipment dispenses and often processes a variety of food and beverage products. For instance, some such equipment processes the product by combining ingredients, mixing, and preparing the food at the proper temperature, while others function mainly as a holding tank to deliver the product at the desired temperature or to deliver chilled ingredients for the processing, mixing, and preparation. Some may use a refrigerant in a heat pump or utilize waste heat from the cooling system to provide hot beverages. Some may also provide heating functions to melt or dislodge ice or for sanitation purposes. This equipment can be self-contained or can be connected via piping to a dedicated condensing unit located elsewhere. Equipment within this subsector category include but are not limited to equipment used to make: chilled and frozen beverages (carbonated and uncarbonated, alcoholic and nonalcoholic); frozen custards, gelato, ice cream, Italian ice, sorbets and yogurts; milkshakes, ''slushies'' and smoothies; and whipped cream.

[81] The specific charge size limit depends on flammability characteristics of each A2L refrigerant, the volume of the room housing the system, the system design, and other parameters.

[82] EPA notes for all substitutes identified in section VII.F of this preamble, not every substitute listed is necessarily available across all U.S. markets. For example, in some cases, substitutes may be technologically and economically viable and may be in use in international markets but may be unavailable in specific U.S. market for other reasons such as building code restrictions. The lists of ''available'' substitutes therefore includes some substances which may only be ''potentially available'' in some areas. EPA also notes that not all of the identified substitutes are listed as acceptable under the SNAP program. See section VII.E.2 of this preamble for a discussion on availability of substitutes.

[83] Air-Conditioning, Heating, & Refrigeration Institute (AHRI). 2019. AHRI Letter Responding to CARB's Request for Input and Clarifications Following the August 6, 2019, Public Meeting for Industrial Process Refrigeration and Transport Refrigeration Equipment. Available in the docket.

Historically, refrigerated food processing and dispensing equipment relied on ODS refrigerants, including CFC–12 and HCFC–22. In response to the phaseout of ODS under the Clean Air Act and the Montreal Protocol, refrigerated food processing and dispensing equipment adopted HFC–134a and R–404A in medium- and low-temperature applications, respectively. Both HFC–134a and R–404A are potent GHGs with GWPs of 1,430 and 3,920, respectively.

With respect to the third category of equipment to be included under retail food refrigeration, remote condensing units exhibit refrigerating capacities ranging typically from 1 kW to 20 kW (0.3 to 5.7 refrigeration tons). They are composed of one (and sometimes two) compressor(s), one condenser, and one receiver assembled into a single unit, which is normally located external to the sales area. This equipment is connected to one or more nearby evaporator(s) used to cool food and beverages stored in display cases and/or walk-in storage rooms. Remote condensing units are commonly installed in convenience stores and specialty shops such as bakeries and butcher shops. Remote condensing units historically used the ODS HCFC–22. While many HCFC–22 systems remain in use today, newly manufactured systems primarily use R–404A or HFC–134a. Other blends that use HFCs—including R–407A, R–407C, R–407F, and R–507A—are also in use.

With respect to the fourth category of equipment to be included under retail food refrigeration, typical supermarket systems are known as multiplex or centralized systems. They operate with racks of compressors installed in a machinery room; different compressors turn on to match the refrigeration load necessary to maintain temperatures. Two main design classifications are used: direct and indirect systems. In a direct system, the refrigerant circulates from the machinery room to the sales area, where it evaporates in display-case heat exchangers, and then returns in vapor phase to the suction headers of the compressor racks. The supermarket walk-in cold rooms are often integrated into the system and cooled similarly, but another option is to provide a dedicated condensing unit for a given storage room.

Indirect supermarket designs include secondary loop systems and cascade refrigeration.[84] Indirect systems use a chiller or other refrigeration system to cool a secondary fluid that is then circulated throughout the store to the cases. Compact chiller versions of an indirect system rely on a lineup of 10–20 units, each using small charge sizes. As the refrigeration load changes, more or fewer of the chillers are active. Compact chillers are used in a secondary loop system whereby the chillers cool a secondary fluid that is then circulated throughout the store to the display cases. Each compact chiller is an independent unit with its own refrigerant charge, reducing the potential volume of refrigerant that could be released from leaks or catastrophic failures. Despite the term ''chiller'' used in the above examples, these systems would be regulated as supermarket systems under this proposed rule.

Another type of supermarket design, often referred to as a distributed refrigeration system, uses an array of separate compressor racks located near the display cases rather than having a central compressor rack system. Each of these smaller racks handles a portion of the supermarket load, with 5–10 such systems in a store.

Supermarket rack systems historically used CFC–12, R–502, HCFC–22, and other blends containing HCFCs in a centralized design. While many of these systems remain in use, some have been retrofitted to replace the ODS refrigerant with a blend that uses an HFC (*e.g.,* R–404A, R–422A, R–422B, R–422D, R–427A, R–438A, and R–507A). For newly manufactured systems, refrigerant blends containing HFCs (*e.g.,* R–404A, R–507A, R–407A, R–407C, and R–407F) dominate the market.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Retail Food Refrigeration and Vending Machines

EPA granted seven petitions that requested restrictions on the use of HFCs for retail food refrigeration and/or vending machines. These petitions were submitted by NRDC, CARB, IIAR (two petitions), EIA, and AHRI (two petitions).

NRDC and CARB individually petitioned EPA to restrict specific substances for new equipment used in the following subsectors (specific substances are in parenthesis):

- ''Stand-alone low-temperature units'' (HFC–227ea, KDD6, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407A, R–407B, R–407C, R–407F, R–410A, R–410B, R–417A, R–421A, R–421B, R–422A, R–422B, R–422C, R–422D, R–424A, R–428A, R–434A, R–437A, R–438A, R–507A, RS–44 (2003 formulation))
- ''Stand-alone medium-temperature units with a compressor capacity equal to or greater than 2,200 btu/hour and stand-alone medium-temperature units containing a flooded evaporator'' (FOR12A, FOR12B, HFC–134a, HFC–227ea, KDD6, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407A, R–407B, R–407C, R–407F, R–410A, R–410B, R–417A, R–421A, R–421B, R–422A, R–422B, R–422C, R–422D, R–424A, R–426A, R–428A, R–434A, R–437A, R–438A, R–507A, RS–24 (2002 formulation), RS–44 (2003 formulation), SP34E, THR–03))
- ''Stand-alone medium-temperature units with a compressor capacity below 2,200 btu/hour and not containing a flooded evaporator'' (FOR12A, FOR12B, HFC–134a, HFC–227ea, KDD6, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407A, R–407B, R–407C, R–407F, R–410A, R–410B, R–417A, R–421A, R–421B, R–422A, R–422B, R–422C, R–422D, R–424A, R–426A, R–428A, R–434A, R–437A, R–438A, R–507A, RS–24 (2002 formulation), RS–44 (2003 formulation), SP34E, THR–03))
- ''Remote condensing units'' (HFC–227ea, R–404A, R–407B, R–421B, R–422A, R–422C, R–422D, R–428A, R–434A, R–507A)
- ''Retail food refrigeration—refrigerated food processing and dispensing equipment'' (HFC–227ea, KDD6, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407A, R–407B, R–407C, R–407F, R–410A, R–410B, R–417A, R–421A, R–421B, R–422A, R–422B, R–422C, R–422D, R–424A, R–428A, R–434A, R–437A, R–438A, R–507A, RS–44 (2003 formulation),
- ''Supermarket systems'' (HFC–227ea, R–404A, R–407B, R–421B, R–422A, R–422C, R–422D, R–428A, R–434A, R–507A) and
- ''Vending machines'' (FOR12A, FOR12B, HFC–134a, KDD6, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407C, R–410A, R–410B, R–417A, R–421A, R–422B, R–422C, R–422D, R–426A, R–437A, R–438A, R–507A, RS–24 (2002 formulation), SP34E).

Both petitioners also requested that EPA restrict the use of specific substances used for retrofitted equipment in:

- ''Supermarket systems'' (R–404A, R–407B, R–421B, R–422A, R–422C, R–422D, R–428A, R–434A, R–507A)
- ''Remote condensing units'' (R–404A, R–407B, R–421B, R–422A, R–422C, R–422D, R–428A, R–434A, R–507A)

[84] See section VII.F.3.a of this preamble for a description of cascade systems.

- ''Stand-alone units'' (R–404A, R–507A)
- ''Vending machines'' (R–404A, R–507A)

NRDC requested that EPA establish a January 1, 2023, compliance date for restrictions in all of these subsectors. CARB's petition further included a request to establish a GWP limit of 150 for HFCs used in new retail food refrigeration equipment[85] with charge sizes greater than 50 pounds but did not specify a compliance date.

IIAR submitted two petitions for certain applications with ''retail food refrigeration.'' One petition requested that EPA establish a GWP limit of 150 for retail food refrigeration by January 1, 2022. In another granted petition, IIAR requested that EPA establish a GWP limit of 150 for new retail food refrigeration equipment with refrigerant charge capacities greater than 200 pounds and a GWP limit of 300 for new retail food refrigeration equipment with refrigerant charge capacities less than or equal to 200 pounds, by January 1, 2026. IIAR also requested that a GWP limit of 300 be established for the high temperature side of cascade systems by January 1, 2026.

EIA's petition requested that EPA establish a GWP limit of 150 for HFCs used in new supermarket systems with refrigerant charge sizes greater than 50 pounds by January 1, 2023, or one year following finalization of rulemaking.

Lastly, EPA granted two petitions from AHRI. One petition asked for restrictions on the use of HFCs used in ''standalone/self-contained refrigeration systems'' and ''remote refrigeration systems.''[86] Specifically, AHRI requested that EPA establish a GWP limit of 300 for new ''standalone/self-contained refrigeration systems'' and a GWP limit of 300 for new ''remote refrigeration systems'' by January 1, 2026. AHRI's petition also requested that ''medical, scientific and research applications'' be exempted. AHRI's second granted petition requested that EPA establish a GWP limit of 150 for new supermarket systems and remote condensing units with refrigerant charge capacities greater than 200 pounds, and a GWP limit of 300 for the same equipment with refrigerant charge capacities less than or equal to 200 pounds by January 1, 2026. AHRI also requested a GWP limit of 300 for the high temperature side of cascade systems. This petition also requested that EPA establish a GWP limit of 150 for new stand-alone and refrigerated food processing and dispensing equipment by January 1, 2026.

Additional information, including the relevant petitions, is available in the docket. What restrictions on the use of HFCs is EPA proposing for new retail food refrigeration—stand-alone units?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs that have a GWP of 150 or greater beginning January 1, 2025, in retail food refrigeration—stand-alone units. This proposed GWP limit would apply to new equipment used in retail food refrigeration—stand-alone units, irrespective of compressor capacity or evaporator design.

For new equipment, several substitutes are available in place of the HFCs and blends containing HFCs that EPA is proposing to restrict, which informed EPA's consideration of the availability of substitutes. These include R–744 (GWP 1), R–290 (GWP 3), R–600a (GWP <1), and R–441A (GWP 3). In addition to these substitutes' lower GWP, some of these substitutes also offer additional environmental benefits via increased energy efficiency. For example, several sources show that R–290 offers significant efficiency benefits as compared to traditional higher-GWP refrigerants used for commercial refrigeration. Studies have shown that energy use can be reduced between 21 and 34 percent, depending on operating conditions, for commercial refrigeration systems utilizing R–290 instead of R–404A.[87] [88] [89] One company claimed that equipment using R–290 as the refrigerant consumed between 11 and 63 percent, depending on the model, when compared to an equivalent model using HFC–134a[90] ''without sacrificing quality.''[91]

Furthermore, use of R–290 and other lower-GWP refrigerants has increased over the past seven years in various stand-alone equipment types, indicating that use of substitutes is technologically achievable and that there is commercial demand for equipment that use substitutes. EPA is also aware of several available low and medium temperature units using substitutes such as R–290 and R–600a. Commercial demands for equipment types that use R–290, based on EPA's research,[92] include reach-in refrigerators and freezers, beverage coolers, and food service equipment and types of equipment that use R–744 include beverage coolers and vending machines.

EPA also notes that several states have banned the use of higher-GWP refrigerants in stand-alone units. The states/commonwealths of California, Colorado, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Virginia, Vermont, and Washington all have legal restrictions on the use of HFCs and HFC blends in stand-alone equipment, and, depending on the state, these restrictions went into effect at various times between the years 2020 through 2022. Stand-alone equipment using lower-GWP substitutes are being sold in these markets to comply with regulatory requirements, clearly indicating that these types of equipment using available substitutes are available, which informs our consideration of the availability of substitutes under subsection (i)(4)(B), including our consideration of subfactors such as technological achievability and commercial demands.

What restrictions on the use of HFCs is EPA proposing for retrofitted retail food refrigeration—stand-alone units?

EPA is not proposing any restrictions on the use of HFCs in retrofitted stand-alone units. For future consideration in a potential subsequent rulemaking, the Agency is taking comment on and seeking data and information regarding the prevalence of retrofitting in stand-alone units. EPA is also seeking comment on what refrigerants are commonly used in retrofitted stand-alone units. EPA is also seeking comment on a GWP limit to set for these

[85] Under CARB's HFC regulation, retail food refrigeration includes stand-alone units (equipment), refrigerated food processing and dispensing units (equipment), remote condensing units, and supermarket systems. Available in the docket and at: *https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hfc2020/frorevised.pdf.*

[86] Another petition submitted by AHRI on April 13, 2021, available at *www.regulations.gov* in Docket ID No. EPA–HQ–OAR–2021–0289, requested different restrictions for the same subsectors. As discussed in section VII.D.2 of this preamble, EPA is treating AHRI's later petition as an addendum to AHRI's earlier petitions.

[87] Emerson, October 2016. The Case for R–290. E360 Outlook. Available at: *https://e360hub.emerson.com/emersons-r-290-product-offerings/the-case-for-r-290-5.*

[88] Carel, March 2020. Six Reasons to Use Propane as Refrigerant. Available at: *https://www.carel.com/blog/-/blogs/six-reasons-to-use-propane-as-refrigerant.*

[89] Mastrullo, Rita & Mauro, Alfonso & Menna, Laura & Vanoli, G.P. (2014). Replacement of R404A with propane in a light commercial vertical freezer: A parametric study of performances for different system architectures. Energy Conversion and Management. 82. 54–60. *10.1016/j.enconman.2014.02.069.*

[90] True Manufacturing, 2019, Hydrocarbon (Natural Refrigerant) Brochure. Available at: *https://www.truemfg.com/Media-Center/Marketing-Collateral.*

[91] True Manufacturing, Company Profile. Video. Available at: *https://truemfg.com/Media-Center/Videos.*

[92] See Commercial Demands and Technological Achievability TSD in the docket for a list of products in the affected sectors and subsectors using substitutes.

units. As noted earlier in the preamble, EPA does not intend to respond to any advance comments or information received regarding retrofitted retail food refrigeration—stand-alone units.

What restrictions on the use of HFCs is EPA proposing for new retail food refrigeration—refrigerated food processing and dispensing equipment?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs that have a GWP of 150 or greater beginning January 1, 2025, in retail food refrigeration—refrigerated food processing and dispensing equipment. This proposed GWP limit would apply to new equipment used in retail food refrigeration— refrigerated food processing and dispensing equipment.

For its consideration of availability of substitutes under subsection (i)(4)(B), EPA identified substitutes such as R–744 and R–717 which are available for use in this subsector in place of the HFCs and blends containing HFCs that EPA is proposing to restrict. Additionally, EPA is aware that companies have expressed interest in using other substitutes such as R–290 for this subsector.

Based on the Agency's review of available information as well as state regulatory activities, EPA is proposing a compliance date of January 1, 2025. EPA is aware of actions being taken in various states and local jurisdictions that have or will amend building codes that will increase the availability of substitutes by permitting additional substitutes, including certain flammable substitutes, with GWPs below the proposed GWP limit.[93]

What restrictions on the use of HFCs is EPA proposing for new retail food refrigeration—supermarket systems?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 150 or greater in supermarket systems with refrigerant charge capacities equal to or greater than 200 pounds beginning January 1, 2025. For supermarket systems with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems, EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 300 or greater, beginning January 1, 2025. These proposed GWP limits would apply to new retail food refrigeration—supermarket systems.

As with IPR systems, EPA is proposing to distinguish between larger supermarket systems (*i.e.,* those with refrigerant charge capacities equal to or greater than 200 pounds) and smaller systems (*i.e.,* those with refrigerant charge capacities less than 200 pounds). EPA is also proposing different GWP limits for refrigerants used in cascade systems. See section VII.F.3.a in the preamble for a discussion on EPA's rationale for making these distinctions.

For its consideration of availability of substitutes under subsection (i)(4)(B), EPA identified substitutes that are available in place of the proposed restricted substances that EPA is proposing to restrict for larger refrigerant charge capacities (*i.e.,* those with refrigerant charge capacities less than 200 pounds). These include R–717, which can be used in a secondary loop (indirect) supermarket refrigeration system, and R–744, which can be used for centralized direct and indirect supermarket refrigeration systems. For systems with smaller refrigerant charge capacities, substitute refrigerants R–454C (GWP 146), R–471A (GWP 139), and R–516A (GWP 140) can serve as other potential candidates for use in place of the HFCs and blends containing HFCs that EPA is proposing to restrict.

EPA notes that the proposed GWP limits would support the transition to lower-GWP substitutes and innovative technologies including those that have been used widely in other parts of the world, such as Europe and Canada, and have seen increased use in the United States. For example, the global market of transcritical R–744 systems, which are manufactured by a number of U.S. companies, is expected to grow significantly, at a compound annual growth rate of 12.69 percent, between 2018 and 2025.[94] R–744 systems may also provide additional beneficial environmental impacts via increased energy efficiency in some cases; however, R–744 systems can experience declining efficiencies in high ambient temperature (*e.g.,* Bahrain) although technologies continue to be under development.

What restrictions on the use of HFCs is EPA proposing for retrofitted retail food refrigeration—supermarket systems?

EPA is not proposing restrictions on the use of HFCs in retrofitted retail food refrigeration—supermarket systems. EPA acknowledges that two granted petitions contained requests for EPA to restrict the use of specific substances in retrofitted supermarkets systems (as described in this section above). However, the Agency did not find specific information on substitutes used in retrofitted supermarkets, though the Agency is aware of possible substitutes (*e.g.,* R–450A, R–513A, R–448A, and R–449A). EPA, therefore, is seeking comment on what substitutes are commonly used in retrofitted supermarket systems. As noted earlier in the preamble, EPA does not intend to respond to any advance comments or information received regarding retrofitted retail food refrigeration—supermarket systems.

What restrictions on the use of HFCs is EPA proposing for new retail food refrigeration—remote condensing units?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 150 or greater for remote condensing units with refrigerant charge capacities greater than 200 pounds beginning January 1, 2025. For remote condensing units with refrigerant charge capacities less than 200 pounds, and for the high temperature side of cascade systems, EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 300 or greater, beginning January 1, 2025. These proposed GWP limits would apply to new equipment used in remote condensing units.

EPA is proposing to distinguish between larger remote condensing units (*i.e.,* those with refrigerant charge capacities equal to or greater than 200 pounds) and smaller systems (*i.e.,* those with refrigerant charge capacities less than 200 pounds) and is proposing a different GWP limit for the high temperature side of a cascade system, based on the rationale stated in section VII.F.3.a in the preamble.

For its consideration of availability of substitutes under subsection (i)(4)(B), EPA identified available substitutes in place of the proposed restricted substances, including R–744 (GWP 1) and R–717 (GWP 0). Additional refrigerants that could potentially be available substitutes include R–454C (GWP 146), R–471A (GWP 139), and R–455A (GWP 146). R–744 remote condensing units are now commercially available in several markets, including in the United States. Although market penetration is low at present globally, it is expected to increase in the near future.[95]

[93] See the TSD on building codes in the docket for additional information on building codes and list of substitutes.

[94] Global Transcritical CO2 Systems Market by Function (Refrigeration, Air Conditioning, Heating), Application (Heat Pumps, Food Processing, Others), Region, Global Industry Analysis, Market Size, Share, Growth, Trends, and Forecast 2018 to 2025, FiorMarkets, March 2019. Report description available at: *https://www.fiormarkets.com/report/global-transcritical-co2-systems-market-by-function-refrigeration-376006.html.*

[95] Refrigeration, Air Conditioning, and Heat Pumps Technical Options Committee 2018 Assessment Report, Technical and Economic Assessment Panel, UNEP, February 2019. Available

Continued

What restrictions on the use of HFCs is EPA proposing for retrofitted retail food refrigeration—remote condensing units?

EPA is not proposing restrictions on the use of HFCs in retrofitted remote condensing units. EPA acknowledges that two granted petitions contained requests for EPA to restrict the use of specific substances in retrofitted remote condensing units. However, the Agency did not find sufficient information demonstrating that there would be available substitutes for use in remote condensing units undergoing retrofits. However, the Agency is aware of substances that could potentially be available substitutes (*e.g.,* R–450A, R–513A, and R–448A) and is therefore seeking comment on whether there are substitutes to HFCs that are commonly used in retrofitted remote condensing units. As noted earlier in the preamble, EPA does not intend to respond to any advance comments or information received regarding retrofitted retail food refrigeration—remote condensing units.

What restrictions on the use of HFCs is EPA proposing for new vending machines?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs that have a GWP of 150 or greater in vending machines beginning January 1, 2025. This proposed GWP limit would apply to new vending machines.

For its consideration of availability of substitutes under subsection (i)(4)(B), EPA identified available substitutes in place of the proposed restricted substances including, R–290 (GWP 3), R–600a (GWP <1), R–744 (GWP 1), and R–441A (GWP 3).

Vending machines using lower-GWP refrigerants, primarily R–290 and R–744, are technologically achievable and the use of these substitutes is increasing, indicating commercial demands. Two of the largest vending machine customers in the U.S. market, Coca-Cola and PepsiCo, have been using R–744 over the past decade.[96] [97] Recently, industry safety standards and building codes have been revised to allow the use of lower-GWP substitutes. ASHRAE amended the safety standard ASHRAE 15 to allow vending machines with up to 114 grams of R–290 to be used in those locations where they were not previously allowed prior to the modification of industry standards. UL also modified their standard covering this equipment ''for the unrestricted placement of vending machines refrigerated with advanced, environmentally-friendly coolants.'' [98] Beginning January 1, 2020, the NAMA Foundation partnered with DOE in a two-year, $400,000 cooperative research and development agreement on energy efficient vending machines utilizing refrigerants such as R–290.[99]

On which topics is EPA specifically requesting comment?

EPA is requesting comment on the proposed GWP limits for subsectors in retail food refrigeration and vending machines described in this section. EPA is also specifically requesting comment for new supermarket systems and remote condensing units and its proposal to establish a GWP limit of 150 or greater for HFCs and blends used in new systems with refrigerant charge capacities greater than 200 pounds, and a GWP limit of 300 or greater for HFCs and blends containing HFCs used in new systems with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems. EPA is considering whether a GWP limit lower than the proposed limit of 300 would be appropriate for systems with smaller refrigerant charge capacities (*i.e.,* less than 200 pounds). Accordingly, EPA seeks comment on technical and design challenges that exist for such systems to use refrigerants with GWPs less than 150, and strategies that can be employed to mitigate these challenges.

c. Cold Storage Warehouses

Background on Cold Storage Warehouses

Cold storage warehouses are refrigerated facilities used for the storage of temperature-controlled substances. Cold storage warehouses can be divided into two categories: central plant systems and packaged systems. Central plants are custom-built refrigeration systems that are typically used in large refrigerated warehouses with cooling capacities that range from 20 to 5,000 kW. Central plant systems deliver cool air to the refrigerated space through evaporators, which are typically suspended from the ceiling in the refrigerated space. The evaporators are connected through a piping network to multiple compressors located in a central machine room, and a condenser, which is typically mounted outside near the compressor. Central plant systems may have a direct or indirect (secondary loop) design. Direct systems circulate a primary refrigerant throughout the refrigerated space. In an indirect system, a primary refrigerant cools a secondary refrigerant in the machine room, and the secondary refrigerant is then circulated throughout the refrigerated space.

Packaged systems (also known as unitary systems) are self-contained systems that combine an evaporator, compressor, and condenser in one frame. Packaged systems are commonly installed on the roof of a refrigerated warehouse above the air cooling units that are within the refrigerated space. The evaporator is located inside the refrigerated space of a walk-in facility while the condensing unit, which is usually protected by weather resistant housing, is located outside. Packaged systems are most commonly used in small refrigerated warehouses that have a capacity of 20 to 750 kW.

In response to the phaseout of ODS under the Clean Air Act and the Montreal Protocol, in the 1990s many manufactures began the transition from CFCs to HCFC–22, and then later from HCFC–22 to HFCs—primarily R–404A and R–507, which have GWPs of 3,922 and 3,985, respectively.[100] Some ODS users transitioned to R–717, as well.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Cold Storage Warehouses

EPA granted six petitions that requested restrictions on the use of HFCs in cold storage warehouses, which were submitted by EIA, IIAR (two petitions), CARB, AHRI, and NRDC. Three petitions—submitted by EIA, IIAR, and CARB—requested that EPA establish a GWP limit of 150 for HFCs used in new cold storage warehouses that contain more than 50 pounds of refrigerant. EIA requested a compliance date of January 1, 2023, or one year following the finalization of rulemaking. IIAR requested a compliance date of January 1, 2022. CARB did not specify a compliance date.

Two petitions—AHRI and IIAR's second petition—requested that EPA establish a GWP limit of 150 for HFCs used in new cold storage warehouses with refrigerant charge capacities greater

at: *https://ozone.unep.org/sites/default/files/2019-04/RTOC-assessment-report-2018_0.pdf.*

[96] Coca-cola, January 2014, Coca-cola Installs 1 Millionth HFC-Free Cooler Globally, Preventing 5.25MM Metric Tons of CO_2. Available at: *https://www.coca-colacompany.com/press-releases/coca-cola-installs-1-millionth-hfc-free-cooler.*

[97] PepsiCo, 2020. Sustainability Focus Area: Climate. Available at: *https://www.pepsico.com/our-impact/sustainability/focus-area/climate.*

[98] Karnes, B, March 2021, Revisions to UL 541, the Standard for Refrigerated Vending Machines. Available at: *https://www.ul.com/news/revisions-ul-541-standard-refrigerated-vending-machines.*

[99] NAMA, 2019. NAMA Foundation Annual Report 2019. Available at: *https://namanow.org/wp-content/uploads/2019-NAMA-Foundation-Annual-Report.pdf.*

[100] Refrigeration, Air Conditioning, and Heat Pumps Technical Options Committee 2018 Assessment Report, Technical and Economic Assessment Panel, UNEP, February 2019. Available at: *https://ozone.unep.org/sites/default/files/2019-04/RTOC-assessment-report-2018_0.pdf.*

than 200 pounds and a GWP limit of 300 for HFCs used in new cold storage warehouses with refrigerant charge capacities less than or equal to 200 pounds. Both petitions also requested a GWP limit of 300 for the HFCs used in the high temperature side of cascade systems. These petitions requested a January 1, 2026, compliance date for these restrictions.

NRDC's petition requested that EPA specifically restrict the use of the following substances in new cold storage warehouses: HFC–227ea, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407A, R–407B, R–410A, R–410B, R–417A, R–421A, R–421B, R–422A, R–422B, R–422C, R–422D, R–423A, R–424A, R–428A, R–434A, R–438A, R–507A, and RS–44 (2003 composition).

Additional information, including the relevant petitions, is available in the docket. What restrictions on the use of HFCs is EPA proposing for cold storage warehouses?

EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 150 or greater in cold storage warehouse systems with refrigerant charge capacities equal to or greater than 200 pounds beginning January 1, 2025. For cold storage warehouse equipment with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems, EPA is proposing to prohibit the use of HFCs and blends containing HFCs with a GWP of 300 or greater, beginning January 1, 2025. These proposed GWP limits would apply to new equipment used in cold storage warehouses.

EPA is proposing to distinguish between larger equipment in new cold storage warehouses (*i.e.,* those with refrigerant charge capacities equal to or greater than 200 pounds) and smaller systems (*i.e.,* those with refrigerant charge capacities less than 200 pounds) and is proposing a different GWP limit for the high temperature side of a cascade system, based on the rationale stated in section VII.F.3.a in the preamble.

For its consideration of availability of substitutes under (i)(4)(B), EPA identified several substitutes that are available in place of the substances that EPA is proposing to restrict. For systems with refrigerant charge capacities equal to or greater than 200 pounds, these include R–717 vapor compression, R–744 (GWP 1), HCFO–1233zd(E) (GWP 3.7), R–454C (GWP 146), and R–471A (GWP 139); for smaller systems, R–454A (GWP 237) is an available substitute, in addition to those listed for larger systems. In addition to traditional vapor-compression cycle systems, several other types of systems that operate using thermodynamic cycles other than vapor compression such as R–717 absorption, evaporative cooling, desiccant cooling, and Stirling cycle systems can be used in this subsector. These systems could also be used to comply with the GWP limit proposed.

Market trends show that a significant portion of cold storage warehouses have transitioned from, or completely avoided, using higher-GWP substances. Most cold storage warehouses in the United States use R–717 due to its long-standing use, lower cost per kilogram, and energy savings.[101] While R–717 is not used extensively in many other subsectors of the RACHP sector, certain characteristics of cold storage warehouses reduce their typical proximity to people and have facilitated the widespread use of that refrigerant in this application, even though R–717 is listed as a lower flammability, higher toxicity (B2L) refrigerant in ASHRAE Standard 34. For example, because cold storage warehouses are often large to achieve economies of scale and require a large amount of land use—as opposed to other systems that might be located on a building roof or a small slab next to the building—they are typically located away from population centers where land costs and taxes may be higher. In addition, the transportation of goods is typically done in large volumes—by truck or train—to reduce costs, which in turn reduces the workforce needed and the number of people at the warehouse and, in particular, near the refrigeration equipment. These factors reduce the risk of using R–717, compared with other applications where more people might be present such as an office building. Additionally, R–717 is considered by many users to be a cost-effective option for use in cold storage warehouses despite a higher capital cost for the equipment compared to HFC systems.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs used in new cold storage warehouse systems with refrigerant charge capacities greater than 200 pounds, and a GWP limit of 300 or greater for HFCs and blends containing HFCs used in new cold storage warehouses with refrigerant charge capacities less than 200 pounds and for the high temperature side of cascade systems. EPA is considering whether a GWP limit lower than the proposed limit of 300 would be appropriate for systems with smaller refrigerant charge capacities (*i.e.,* less than 200 pounds). Accordingly, EPA seeks comment on technical and design challenges that exist for such systems to use refrigerants with GWPs less than 150 and strategies that can be employed to mitigate these challenges.

[101] Ibid.

d. Ice Rinks

Background on Ice Rinks

Ice rinks use equipment that move a fluid through pipes embedded in the concrete flooring of the facility to freeze layers of water. Ice rinks may be used by the public for recreational purposes as well as by professionals. These systems frequently use secondary loop refrigeration systems, in some cases consisting of a chiller along with associated pumps that move the chilled water or glycol working fluid. Another configuration sometimes used is a direct expansion system wherein the refrigerant flows under the ice and directly back to a compressor and condenser. System capacities vary based on the size of the ice rink and the required cooling load. Typical sizes for ice rink chillers are 50-, 100-, 150-, or 200-ton units. The ice surface is ideally maintained between 24 to 28 °F (−4.4 to −2.2 °C) depending on the application and users of the ice rink (*e.g.,* figure skating versus hockey).

Where local codes may not allow the use of ammonia in ice rinks, ice rinks first used ozone depleting CFC/HCFC refrigerants, such as R–22, before transitioning to high-GWP HFCs such as R–404A and R–507A.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Ice Rinks

EPA granted three petitions, submitted by EIA, CARB, and IIAR, which requested restrictions on the use of HFCs and blends containing HFCs for ice rinks. All three petitions requested that EPA establish a GWP limit of 150 for HFCs and blends containing HFCs used in new ice rinks with more than 50 pounds of refrigerant by January 1, 2024. EIA also requested that EPA establish a GWP limit of 750 for HFCs and blends containing HFCs used in retrofitted ice rinks with more than 50 pounds of refrigerant by January 1, 2024. Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for new ice rinks?

EPA is proposing to restrict the use of HFCs or blends containing HFCs that have a GWP of 150 or greater in new ice

rink systems beginning January 1, 2025. These proposed GWP limits would apply to HFCs used in new ice rinks.

For its consideration of availability of substitutes under (i)(4)(B), EPA identified substitutes that are available in place of the substances that the Agency is proposing to restrict. These include R–717 (GWP 0), R–744 (GWP 1), and HCFO–1233zd(E) (GWP 3.7). R–471A (GWP 139) also meets the proposed GWP limit and can serve as a potential candidate for use in place of the substances that EPA is proposing to restrict.

Most new ice rinks use R–717 as a refrigerant due to its energy efficiency, while others are being designed to use R–744 and other lower-GWP substitutes.[102] Although R–717 is a B2L (higher toxicity, lower flammability) refrigerant, risks to the general public are addressed by confining the R–717 to separate equipment (*i.e.,* the high-side chiller) in locations with access limited to trained service personnel only. In TSDs submitted with their petition, CARB estimated that more than 80 percent of ice rinks in California use R–717.[103] According to EIA's petition, a majority of National Hockey League ice arenas also employ R–717, and the use of R–744 is becoming an increasingly popular option for ice rinks. This information indicates the technical achievability and commercial demand of substitutes.

As noted in this section above, other refrigerant options exist for new ice rinks that meet the proposed GWP limit. HCFO–1233zd(E) has been recently listed as acceptable through the SNAP program for use in new ice rinks. In areas where safety or toxicity reasons prevent the use of R–717, lower-GWP (hydrochlorofluoroolefin) HCFO or HFO chillers and lower-GWP transcritical R–744 systems are options available for use in ice rink systems. Further, EPA identified commercially available products containing some of these substitutes.[104]

What restrictions on the use of HFCs is EPA proposing for retrofitted ice rinks?

One granted petition contained a request for EPA to restrict the use of specific substances in retrofitted remote condensing (as described previously in this section). However, the Agency did not find specific information on available substitutes for retrofitted ice rinks, although the Agency is aware of possible substitutes (*e.g.,* R–450A and R–513A). EPA is therefore not proposing restrictions on the use of HFCs in retrofitted ice rinks. As noted earlier in the preamble, EPA does not intend to respond to any advance comments or information received regarding retrofitted ice rinks.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs used in new ice rinks.

e. Automatic Commercial Ice Machines

Background on Automatic Commercial Ice Machines

Automatic commercial ice machines (ACIM) are used in commercial establishments such as hotels, restaurants, and convenience stores to produce ice for consumer use. Many ACIM can be self-contained units, while some have the condenser separated from the portion of the machine making the ice and have refrigerant lines running between the two (referred to as remote-condensing ACIM). Self-contained or stand-alone units are a type of ACIM in which the ice-making mechanism and storage compartment are in an integral cabinet. Stand-alone ACIM contain both evaporator and condenser, have no external refrigerant connections, and are entirely factory-charged and factory-sealed with refrigerants. These types of systems are analogous to other types of stand-alone equipment like vending machines or refrigerated display cases. These types of systems generally have lower refrigerant charge sizes.

Like other types of remote-condensing RACHP equipment, remote-condensing ACIM utilize a split-system design where the evaporator (which freezes water into ice) is located indoors, while the condensing unit (which rejects heat to surrounding air) is located outdoors. In remote-compressor systems, the heat is still rejected in the indoor room but the compressor is located outdoors via interconnected refrigerant piping. These designs require field-assembled refrigerant piping to connect the indoor unit with the remote condensing unit, which significantly increases the overall refrigerant charge size required as compared to a self-contained system.

R–404A and R–410A are the most common HFC refrigerants used currently for ACIM and replaced the use of ozone depleting HCFCs such as R–22.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Automatic Commercial Ice Machines

EPA granted one petition which requested restrictions on the use of HFCs and blends containing HFCs for ACIM, which was submitted by AHRI. AHRI specifically requested that EPA establishes a GWP limit of 2,200 for HFCs and blends containing HFCs used in new "ACIM"[105] with charge sizes greater than 50 pounds excluding medical, scientific, and research applications by January 1, 2022. Additional information regarding this petition is available in the docket.

What restrictions on the use of HFCs is EPA proposing for automatic commercial ice machines?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 150 or greater for self-contained ACIM with charge sizes less than or equal to 500 grams beginning January 1, 2025. EPA is proposing to restrict the use of the following HFCs and blends containing HFCs in new self-contained ACIM with refrigerant charge capacities exceeding 500 grams beginning January 1, 2025: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B, R–407A, R–410A, R–442A, R–417C, R–407F, R–437A, R–407C, RS–24 (2004 formulation), and HFC–134a. EPA is proposing to restrict the use of the following HFCs and blends containing HFCs in new remote condensing ACIM beginning January 1, 2025: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B. These proposed restrictions would apply on the use of HFCs and blends containing HFCs used in new ACIM.

EPA is proposing three different sets of restrictions on the use of HFCs and blends containing HFCs in ACIM, depending on the type of ACIM. This distinction is based on EPA's current understanding of refrigerant options available for each type of ACIM due to revised industry safety standards. All categories of ACIM are covered by UL Standard 60335–2–89 Standard for Safety for Household and Similar Electrical Appliances—Safety—Part 2–

[102] Packages—Design and Build, Toromont|CIMCO Refrigeration. Available at: *https://www.cimcorefrigeration.com/packages-design-build.*

[103] *Staff Report: Initial Statement of Reasons,* CARB, October 2020. Available at: *https://ww2.arb.ca.gov/rulemaking/2020/hfc2020.*

[104] See the *Commercial Demands and Technological Achievability* TSD in the docket for additional information.

[105] EPA believes AHRI used "ACIM" to refer to automatic commercial ice machines and for the purposes of this proposed action, the Agency will be using that acronym.

89: Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor. UL 60335–2–89 2nd edition recently increased the allowable charge limits for flammable refrigerants in commercial refrigeration equipment, including both flammable (*i.e.,* ''A3'') refrigerants and lower-flammability (*i.e.,* ''A2L'') refrigerants. UL 60335–2–89 2nd edition increases the current charge limit for stand-alone systems using propane (R–290, A3) from a maximum of 150 grams per refrigerant circuit to a maximum of either 300 grams or 500 grams per refrigerant circuit, depending on construction. For stand-alone ACIM, the UL safety standard dictates a 300 gram limit for propane for ''packaged refrigerating units and appliances with doors and/or drawers enclosing one or more refrigerated compartments.'' (22.110 DV.2). This limit applies to ''unprotected'' designs where the refrigerant can leak into the ice storage bin. For protected units, in which the refrigerant cannot leak into the bin, then a 500 gram limit is allowed when using propane and a similar amount for other A3 refrigerants. Further, the UL standard restricts the allowable charge size of flammable refrigerant in these appliances for ''self-contained appliances used in a public corridor or lobby.'' (22.110 DV.2) Certain flammable refrigerants (*i.e.,* ''A3'' or ''A2'') are not allowed in any quantities in split-systems with field-constructed refrigerant piping. (22.110 DV.3)

Based on this reading of the industry safety standard, and other information related to the (i)(4)(B) factors contained in the docket, available substitutes for self-contained ACIM include R–290 (GWP 3) where the charge size is no more than 500 grams, and R–450A (GWP 601), and R–513A (GWP 630) where the charge size is above that amount. Substitute refrigerants R–455A (GWP 146), R–454C (GWP 146), and R–454A (GWP 237) also meet the proposed GWP limit and can serve as other potential candidates for use in place of the HFCs and blends containing HFCs that EPA is proposing to restrict in self-contained units, except that R–454A would not be allowed if the charge size was less than or equal to 500 grams. Refrigerants such as R–454B (GWP 465) and HFC–32 (GWP 675), which are being pursued for other R–410A applications, and R–448A (GWP 1386) and R–449A (GWP 1396), which are being pursued for other R–404A applications, are potential candidates for self-contained ACIM with charge sizes exceeding 500 grams. Available substitutes for remote condensing ACIM include R–448A, R–449A, R–449B, and HFC–134a.

EPA is not proposing a GWP limit for remote condensing ACIM and stand-alone ACIM with refrigerant charge capacities exceeding 500 grams in this action and instead is proposing to restrict the use of specific HFCs and blends containing HFCs. EPA believes a GWP limit of 2,200, as requested in a granted petition, is high compared to the GWP limits that the Agency is proposing in other commercial refrigeration applications. For remote condensing ACIM, the Agency intends to propose a GWP limit at a later time. Likewise, if EPA finalizes a restriction of specific HFCs and blends containing HFCs for standalone ACIM with charge sizes exceeding 500 grams, we intend to propose a GWP limit at a later time. In this action, EPA is proposing to restrict specific substances used in new remote condensing ACIM, and a separate set of specific substances used in new self-contained ACIM with refrigerant charge capacities exceeding 500 grams. As stated in section VII.B of this preamble, this approach—restricting specific substances instead of setting a GWP limit for a given subsector—gives EPA time to identify a GWP limit for this subsector while still restricting those substances that have the highest environmental impact.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on: proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs used in new self-contained ACIM with charge sizes less than or equal to 500 grams; proposing to restrict the use of R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B, R–407A, R–410A, R–442A, R–417C, R–407F, R–437A, R–407C, RS–24 (2004 formulation), and HFC–134a in new self-contained ACIM with charge sizes greater than 500 grams; and proposing to restrict the use of R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B in remote condensing ACIM. EPA is seeking comment on the types of ACIM and substitutes (*i.e.,* refrigerants) that may be used in each type of ACIM and whether certain aspects of the ACIM (*e.g.,* charge size, harvest rate) or refrigerant (*e.g.,* flammability classification, glide, discharge temperature) affect the alternatives that may be used. EPA is requesting comment on the charge size of 500 grams as the differentiation between the proposed 150 GWP limit and the proposed restricted substances for new standalone ACIM. EPA also requests comment on the proposed transition dates and the potential environmental benefits of finalizing a later transition date for one or more of these types of ACIM. For new standalone ACIM with a charge size greater than 500 grams, EPA is also considering a restriction based on a GWP limit, possibly higher than the 150 GWP limit proposed for other standalone ACIMs. We request comment on the advantages or disadvantages of both possible approaches as compared to the proposed restriction. For consideration in a subsequent rulemaking, EPA further seeks information on a GWP limit for new remote condensing ACIM.

f. Refrigerated Transport

Background on Refrigerated Transport

The refrigerated transport subsector primarily moves perishable goods (*e.g.,* food) and pharmaceuticals at temperatures between –22 °F (−30 °C) and 61 °F (16 °C) by various modes of transportation, including roads, vessels, and intermodal containers. For this action, EPA is proposing three distinct subsectors: refrigerated transport—road, refrigerated transport—marine, and refrigerated transport—intermodal containers.

Refrigerated transport—road consists of refrigeration for perishable goods in refrigerated vans, trucks, or trailer-mounted systems and is the most common mode of refrigerated transport. This mode includes refrigerated trucks and trailers with a separate autonomous refrigeration unit with the condenser typically located at the front of a refrigerated trailer. This subsector also covers domestic trailer refrigeration units that contain an integrated motor (*i.e.,* does not require a separate electrical power system or separate generator set to operate) that are transported as part of a truck, on truck trailers, and on railway flat cars. Other types of containers, such as seagoing ones that are connected to a vessel's electrical system or require a separate generator that is not an integral part of the refrigeration unit to operate, are not included. This subsector also does not include: (i) refrigerated vans or other vehicles where a single system also supplies passenger comfort cooling, (ii) refrigerated containers that are less than 8 feet 4 inches in width, (iii)

refrigeration units used on containers that require a separate generator to power the refrigeration unit, or (iv) ship holds.

Refrigerated transport—marine consists of refrigeration for perishable goods on refrigerated vessels and various modes of transportation via water, including merchant, naval, fishing, and cruise-shipping. And lastly, refrigerated transport—intermodal containers are refrigerated containers that allow uninterrupted storage during transport on different mobile platforms, including railways, road trucks, and vessels.

Refrigerated transport equipment manufacturers have used HFC refrigerants, mainly R–404A and HFC–134a, after phasing out ozone depleting CFC and HCFC refrigerants such as R–12 and R–22.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Refrigerated Transport

EPA granted one petition which requested restrictions on the use of HFCs and blends containing HFCs for refrigerated transport, which was submitted by AHRI. AHRI specifically requested that EPA establish a GWP limit of 2,200 for HFCs and blends containing HFCs used in new ''transport refrigeration'' by January 1, 2023. Additional information from this petition available in the docket.

What restrictions on the use of HFCs is EPA proposing for refrigerated transport—road?

EPA is proposing to restrict the use of the following HFCs and blends containing HFCs in new refrigerated transport—road systems beginning January 1, 2025: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B.

Similar to EPA's approach in addressing use of HFCs and blends containing HFCs in remote condensing ACIM, EPA is not proposing a GWP limit for refrigerated transport—road in this action and instead is proposing to restrict the use of specific HFCs and blends containing HFCs. EPA believes a GWP limit of 2,200, as requested in a granted petition, is high compared to the GWP limit that the Agency is proposing in other commercial refrigeration applications, and the Agency intends to propose a GWP limit at a later time. In this action, EPA is proposing to restrict specific substances used in new refrigerated transport—road. As stated in section VII.B of this preamble, this approach—restricting specific substances instead of setting a GWP limit for a given subsector—gives EPA time to identify a GWP limit while still restricting those substances that have the highest environmental impact (*e.g.,* R–404A, with a GWP of 3,920, is a commonly used refrigerant in this subsector that EPA is proposing to restrict).

For its considerations of availability of substitutes under subsection (i)(4)(B), EPA identified substitutes that are available in place of the substances that EPA is proposing to restrict. These include R–744 (GWP 1), R–450A (GWP 601), R–513A (GWP 630), and R–452A (GWP 2,140). Cryogenic transport refrigeration systems and direct nitrogen expansion are other existing technologically achievable options. Cryogenic systems, in particular, cool cargo by injection of stored liquid R–744 or nitrogen (R–728) to the cargo space or an evaporator. These systems are used in small and large trucks, primarily in Northern Europe. In recent years manufacturers have also developed products containing the lower-GWP alternative R–452A. R–452A has similar properties to R–404A, including cooling capacity, reliability, refrigerant charge, non-flammability, and low compressor discharge temperatures, supporting its use as a lower-GWP and technologically achievable substitute. The two major U.S.-based manufacturers of refrigeration systems for refrigerated transport—road offer systems using R–452A, [106] [107] an indication of the commercial demands and technological achievability of units using one of the available substitutes.

What restrictions on the use of HFCs is EPA proposing for refrigerated transport—marine?

EPA is proposing to restrict the use of the following HFCs and blends containing HFCs in new refrigerated transport—marine systems beginning January 1, 2025: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B. Similar to refrigerated transport—road, EPA is not proposing a GWP limit at this time.[108] EPA's rationale for restricting specific substances in this subsector and not proposing a GWP limit can be found in section VII.B of this preamble, with additional information in section VII.F.3.e (under the proposed restrictions on the use of HFCs in ACIM).

Available substitutes that can be used in refrigerated transport—marine in place of the substances that EPA is proposing to restrict include R–744, R–450A, R–513A, and R–452A. Marine transport refrigeration systems cover a wide range of merchant, naval, fishing, and cruise-shipping applications and often require specialized and custom refrigeration solutions. Historically, this sector used R–22, R–404A, R–507, R–407C, and R–134a. Today, manufacturers market lower-GWP substitutes for marine applications such as R–717, R–744, and R–290. According to TEAP, HFC/HFO blends with lower GWPs may also be suitable for some applications and system designs.[109]

What restrictions on the use of HFCs is EPA proposing for refrigerated transport—intermodal containers?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 700 or greater for new refrigerated transport—intermodal containers beginning January 1, 2025.

For its considerations of availability of substitutes under subsection (i)(4)(B), EPA identified substitutes that are available in place of the substances that EPA is proposing to restrict. These include R–744 and R–450A. R–513A, R–513B, and R–456A are also potential candidates. According to one TEAP report, thousands of intermodal containers operating with R–744 were purchased or leased in 2016 and 2017.[110] Further, several manufacturers now offer intermodal containers using R–513A for new and retrofit applications.[111] [112] [113] Additionally, EPA

[106] Thermo King to Reduce Global Warming Potential of Transport Refrigeration by Nearly Fifty Percent, Thermo King, January 2022. Available at: *https://www.thermoking.com/na/en/newsroom/2022/01-jan/thermo-king-to-reduce-global-warming-potential-of-transport-refr.html.*

[107] *Carrier Transicold Strengthens Sustainability Initiatives with Lower GWP Refrigerant for North America Truck and Trailer Systems, Carrier Transicold,* December 2020. Available at: *https://www.carrier.com/truck-trailer/en/north-america/news/news-article/carrier_transicold_strengthens_sustainability_initiatives_with_lower_gwp_refrigerant_for_north_america_truck_and_trailer_systems.html.*

[108] See discussion in refrigerated transport—road for EPA's rationale for not proposing a GWP limit for this subsector.

[109] Refrigeration, Air Conditioning, and Heat Pumps Technical Options Committee 2018 Assessment Report, Technical and Economic Assessment Panel, UNEP, February 2019. Available at: *https://ozone.unep.org/sites/default/files/2019-04/RTOC-assessment-report-2018_0.pdf.*

[110] Ibid.

[111] Maersk Container Industry, Star Cool—Refrigerants. Available at: *https://www.mcicontainers.com/products/star-cool/refrigerants.*

[112] *Carrier Transicold Offers Lower GWP Refrigerant Option for PrimeLINE® Container Units,* Carrier Transicold, February 2018. Available at: *https://www.carrier.com/container-refrigeration/en/*

identified one manufacturer that offers an intermodal container using R–744.[114]

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 700 or greater for HFCs and blends containing HFCs used in new refrigerated transport—intermodal containers and proposing to restrict the use of R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B in marine and road applications. EPA is seeking comment on its subdivision of the refrigerant transport subsector and substitutes that may be used in each application. For consideration in a subsequent Agency action, EPA further seeks information on a GWP limit for marine and road applications in refrigerated transport.

g. Residential Refrigeration Systems

Background on Residential Refrigeration Systems

Household refrigerators, freezers, and combination refrigerator/freezers, grouped together in this preamble as ''residential refrigeration systems,'' are appliances intended primarily for residential use, although they may be used outside the home. The designs and refrigeration capacities of equipment vary widely. Household freezers only offer storage space at freezing temperatures, while household refrigerators only offer storage space at non-freezing temperatures. Products with both a refrigerator and freezer in a single unit are most common. For purposes of this proposed rule, other small refrigerated household appliances such as chilled kitchen drawers, wine coolers, and minifridges also fall within this subsector. Household refrigerators and freezers have all refrigeration components integrated, and for the smallest types, the refrigeration circuit is entirely brazed or welded. These systems are charged with refrigerant at the factory and typically require only an electricity supply to begin operation.

CFC–12 was a commonly used refrigerant in household refrigerators and freezers prior to the Montreal Protocol and CAA restrictions on CFCs. The household refrigeration industry transitioned to HFC–134a and HCs. According to the TEAP's 2022 progress report, R–600a (isobutane) is used in 75 percent of all new units globally with HFC–134a used in the remaining 25 percent.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Residential Refrigeration

EPA granted two petitions, submitted by NRDC and CARB, that requested restrictions on the use of HFCs and blends containing HFCs for household refrigerators and freezers. NRDC and CARB requested that EPA restrict specific HFCs and blends containing HFCs used in new household refrigerators and freezers applications, replicated from SNAP Rule 21. The petitions subdivided household refrigerators and freezers into ''household refrigerators and freezers—non-compact or built-in appliances,'' ''household refrigerators and freezers—compact,'' and ''household refrigerators and freezers—built in appliances'' but requested the same set of restrictions for each group. Specifically, the petitions requested that EPA restrict FOR12A, FOR12B, HFC–134a, KDD6, R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407C, R–407F, R–410A, R–410B, R–417A, R–421A, R–421B, R–422A, R–422B, R–422C, R–422D, R–424A, R–426A, R–428A, R–434A, R–437A, R–438A, R–507A, RS–24 (2002 formulation), RS–44 (2003 formulation), SP34E, and THR–03. NRDC's petition requested that these restrictions take effect on January 1, 2023, for all subsectors; CARB did not request a specific compliance date. Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for household refrigerators and freezers?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 150 or greater for residential refrigeration systems beginning January 1, 2025. EPA is proposing this same date for the entire subsector, including all subdivisions differentiated in the petitions. This GWP limit would apply to new residential refrigeration systems.

For its consideration of the availability of substitutes under subsection (i)(4)(B), EPA identified substitutes that are available in place of the substances that EPA is proposing to restrict. These include R–290 (GWP 3), R–600a (GWP <1), R–441A (GWP 3), and HFC–152a (GWP 124).

According to the TEAP and its Refrigeration, Air Conditioning and Heat Pumps Technical Options Committee (RTOC), R–600a is the main energy-efficient and cost-competitive alternative used in domestic refrigeration as it is ''. . . the ideal refrigerant for domestic refrigeration products, giving roughly 5 percent higher efficiency than HFC–134a while at the same time reducing the noise level of the unit.''[115] This report also indicated that globally domestic refrigerators are predominantly using R–600a. For the U.S. market, RTOC reports ''substantial progress is being made to convert from HFC–134a to R–600a with the market introduction of small refrigerators and freezer[s] that typically do not use electric defrost. During recent years, this conversion has progressed'' and noted ''[a] major U.S. manufacturer introduced auto-defrost refrigerators using R–600a refrigerant to the U.S. market as early as in 2010.''

Several states and other countries have banned the use of HFC–134a refrigerant in household refrigerator-freezers. The states/commonwealths of California, Colorado, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Virginia, Vermont, and Washington all have legal restrictions on refrigerator-freezers beginning 2021 through 2023. The EU has prohibited refrigerants that contain HFCs with a GWP greater than 150 in household refrigerator-freezers since January 1, 2015.[116] Commercially available and technologically achievable lower-GWP technologies are already being sold in these markets to comply with regulatory requirements.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs used in new residential refrigeration systems.

h. Chillers

Background on Chillers

A chiller is a type of equipment using refrigerant to typically cool water or a brine solution that is then pumped to fan coil units or other air handlers to

worldwide/news/news-article/carrier_transicold_offers_lower_gwp_refrigerant_option_for_primeline_container_units.html.

[113] Thermo King, *Container Fresh and Frozen.* Available at: *https://www.thermoking.com/na/en/marine/refrigeration-units/container-fresh-and-frozen.html.*

[114] Carrier Transicold ''*NaturaLINE*'' products. Additional information available at: *https://www.carrier.com/container-refrigeration/en/worldwide/products/Container-Units/naturaline/.*

[115] TEAP 2022 Progress Report (May 2022) and 2018 Quadrennial Assessment Report are available at: *https://ozone.unep.org/science/assessment/teap;* the 2018 Quadrennial Assessment Report includes sections for each of the TOCs: Flexible and Rigid Foams TOC, Halons TOC, Methyl Bromide TOC, Medical and Chemicals TOC, and Refrigeration, Air Conditioning and Heat Pumps TOC.

[116] For additional information, please refer to the EU legislation to control F-gases web page available at: *https://ec.europa.eu/clima/eu-action/fluorinated-greenhouse-gases/eu-legislation-control-f-gases_en.*

cool the air that is supplied to the occupied spaces. The heat absorbed by the water or brine can then be used for heating purposes and/or can be transferred directly to the air (''air-cooled''), to a cooling tower or body of water (''water-cooled''), or through evaporative coolers (''evaporative-cooled''). A chiller or group of chillers are similarly used for district cooling where a chiller plant cools water or another fluid that is then pumped to multiple locations being served, such as several buildings within the same complex. Chillers may also be used to maintain operating temperatures in various types of buildings, for example, in data centers, server farms, and agricultural/food operations.

Chillers are also used to cool process streams in industrial applications; in such instances, these are regulated as ''chillers for industrial process refrigeration'' as discussed here and not as ''industrial process refrigeration'' as discussed in section VII.F.3.a of this preamble. Chillers are also used for comfort cooling of operators or climate control and protecting process equipment in industrial buildings, for example, in industrial processes when ambient temperatures could approach 200 °F (93 °C) and corrosive conditions could exist.

There are several different types of mechanical, commercial comfort cooling AC systems known as chillers, which use refrigerants in a vapor compression cycle or by alternative technologies. Vapor compression chillers can be categorized by the type of compressor, including centrifugal, rotary, screw, scroll, and reciprocating compressors. The last four compressor types are also called positive displacement chillers.

Centrifugal chillers utilize a centrifugal compressor in a vapor-compression refrigeration cycle. They are typically used for commercial comfort AC although other uses exist. Centrifugal chillers tend to be used in larger buildings and can be found in office buildings, hotels, arenas, convention halls, airport terminals, and other occupied buildings.

Positive displacement chillers utilize positive displacement compressors such as reciprocating, screw, scroll, or rotary types. Positive displacement chillers are applied in similar situations as centrifugal chillers, again primarily for commercial comfort AC, except that positive displacement chillers tend to be used for smaller capacity needs such as in mid- and low-rise buildings.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Chillers

EPA granted four petitions, submitted by CARB, EIA, NRDC, and IIAR, which requested restrictions on the use of HFCs for applications related to chillers for comfort cooling. EPA also granted five petitions which requested restrictions on the use of HFCs for chillers for IPR; these were submitted by AHRI, CARB, EIA, and IIAR (two petitions).

For chillers used for comfort cooling, CARB and NRDC individually petitioned EPA to restrict specific substances in new centrifugal chillers and in new positive displacement chillers.[117] In new centrifugal chillers, these substances are FOR12A, FOR12B, HFC–134a, HFC–227ea, HFC–236fa, HFC–245fa, R–125/134a/600a (28.1/70/1.9), R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407C, R–410A, R–410B, R–417A, R–421A, R–422B, R–422C, R–422D, R–423A, R–424A, R–434A, R–438A, R–507A, RS–44 (2003 composition), and THR–03. In new positive displacement chillers, these are: FOR12A, FOR12B, HFC–134a, HFC–227ea, KDD6, R–125/134a/600a (28.1/70/1.9), R–125/290/134a/600a (55.0/1.0/42.5/1.5), R–404A, R–407C, R–410A, R–410B, R–417A, R–421A, R–422B, R–422C, R–422D, R–424A, R–434A, R–437A, R–438A, R–507A, RS–44 (2003 composition), SP34E, and THR–03. NRDC's petition requested a compliance date of January 1, 2024.

EIA and IIAR separately requested that EPA establish a GWP limit of 750 for new chillers used in the air conditioning sector with a compliance date of January 1, 2024.

For new chillers used for IPR, AHRI, CARB, EIA, and IIAR (two petitions) requested that EPA establish GWP limits. AHRI requested for a GWP limit of 750 for all chillers but requested a compliance date of January 1, 2024, for ''chillers (designed for chilled fluid leaving temperature >+35 °F)'' and a January 1, 2026, compliance date for other types of chillers.[118] CARB and EIA separately petitioned EPA to establish a GWP limit of 750 for ''chillers for industrial process refrigeration (new, minimum evaporator temp designed for >35 °F)''; a GWP limit of 1,500 for ''chillers for industrial process refrigeration (new, minimum evaporator temp designed for −10 °F to 35 °F)''; and a GWP limit of 2,200 for ''chillers for industrial process refrigeration (new, minimum evaporator temp designed for −58 °F to −10 °F).'' EIA's petition specifies a compliance date of January 1, 2024, for these chillers.

IIAR's first petition requested that EPA establish a GWP limit of 150 for ''chillers for industrial process refrigeration (>50 lbs)'' with a compliance date of January 1, 2026. In a second petition, IIAR requested that EPA establish the same limit for ''chillers for industrial process refrigeration (>200 lbs),'' but a GWP limit of 300 for ''chillers for industrial process refrigeration (<200 lbs).'' [119]

Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for chillers—comfort cooling?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 700 or greater for chillers—comfort cooling beginning January 1, 2025. This proposed GWP limit would apply to new equipment for all compressor types of chillers—comfort cooling, *i.e.,* centrifugal and positive displacement (including reciprocating, screw, scroll and rotary) chillers.

For its consideration of the availability of substitutes under subsection (i)(4)(B), EPA identified several substitutes that are available in place of the substances that EPA is proposing to restrict. These include HCFO–1224yd(Z) (GWP 1), HCFO–1233zd(E) (GWP 3.7), HFO–1234yf (GWP <1), HFO–1234ze(E) (GWP <1), R–514A (GWP 3), R–454C (GWP 146), R–515B (GWP 287), R–454B (GWP 465), R–450A (GWP 601), R–513A (GWP 630), and HFC–32 (GWP 675). Chillers for comfort cooling that use lower-GWP substitutes are currently available in both U.S. and international markets. Specifically, in the United States, scroll, other positive displacement, and centrifugal chillers using HCFO–1233zd(E), HFO–1234ze(E), HFC–32, R–454B, R–513A, R–514A, and R–515B are commercially available. Under the SNAP program, EPA recently proposed to expand the list of substitutes listed as acceptable for chillers, and EPA anticipates these substitutes could be used as substitutes to higher-GWP HFCs and blends containing HFCs.[120]

[117] NRDC's petition, available in Docket ID No. EPA–HQ–OAR–2021–0289, excludes those substances subject to narrowed use limits in the previously vacated SNAP Rule 21.

[118] See AHRI's petition received by EPA on August 19, 2021, available at *www.regulations.gov,* under Docket ID No. EPA–HQ–OAR–2021–0289, for other chiller types identified in their petition.

[119] EPA assumes that the ''50 lbs'' and ''200 lbs'' weight denoted in IIAR's petition refers to the refrigerant charge capacity of the system.

[120] See proposed SNAP Rule 25. EPA has proposed listing R–454A (GWP 237), R–454B (GWP

What restrictions on the use of HFCs is EPA proposing for chillers—industrial process refrigeration?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 700 or greater for chillers—industrial process refrigeration beginning January 1, 2025. This proposed GWP limit would apply to new equipment, except for new equipment where the temperature of the chilled fluid leaving the chiller (*i.e.,* the supply temperature to the facility) is less than −58 °F (-50 °C). These lower temperature units are excluded from this proposal.

For its consideration of the availability of substitutes under subsection (i)(4)(B), EPA identified substitutes that are available in place of the substances that EPA is proposing to restrict. These include R–717 (GWP 0), R–744 (GWP 1), R–1270 (GWP 2), R–290 (GWP 3), R–600 (GWP 4), R–450A (GWP 601), and R–513A (GWP 630). Chillers for IPR that use lower-GWP substitutes are currently available in both U.S. and international markets. In the United States, chillers for IPR using R–717, R–290, R–744, and R–513A are all available on the market. Internationally, equipment using R–1270 is available as well.

The proposed GWP limit of 700 for chillers for IPR would enable the use of available substitutes to manage safety (in particular, flammability and toxicity), efficiency, capacity, temperature glide, and other performance factors. In evaluating safety in terms of availability of substitutes for chillers for IPR, EPA notes there may be situations in which the use of hydrocarbons or R–717 may be limited due to safety concerns around flammability and toxicity risks and therefore is proposing a GWP limit that expands the number of refrigerant options for this subsector.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 700 or greater for HFCs and blends containing HFCs used in new chillers—comfort cooling and chillers—IPR. For consideration in a subsequent rulemaking, EPA is seeking comment on a lower GWP limit to propose for both subsectors. EPA is also seeking comment on its subdivision of the chiller subsector.

465), R–452B (GWP 698), and HFC–32 (GWP 675) as acceptable for chillers—comfort cooling (87 FR 45508, July 28, 2022).

i. Residential and Light Commercial Air Conditioning and Heat Pumps

Background on Residential and Light Commercial Air Conditioning and Heat Pumps

The residential and light commercial air conditioning and heat pumps subsector includes equipment for cooling air in individual rooms, single-family homes, and small commercial buildings. Heat pumps are equipment types that heat, or have the option to either cool or heat, air for such locations. This subsector differs from commercial comfort air conditioning, which uses chillers that cool water that is then used to cool air throughout a large commercial building, such as an office building or hotel. The residential and light commercial air conditioning and heat pumps subsector includes both self-contained and split systems. Self-contained systems include some rooftop AC units (*e.g.,* those ducted to supply conditioned air to multiple spaces) and many types of room ACs, including packaged terminal air conditioners (PTACs), packaged terminal heat pumps (PTHPs), some rooftop AC units, window AC units, portable room AC units, and wall-mounted self-contained ACs, designed for use in a single room. Split systems include ducted and non-ducted mini-splits (which might also be designed for use in a single room), multi-splits and variable refrigerant flow (VRF) systems, and ducted unitary splits. Water-source and ground-source heat pumps often are packaged systems similar to the self-contained equipment described in this section above but could be applied with the condenser separated from the other components, similar to split systems. Examples of equipment for residential and light commercial AC and heat pumps include the following:

- Central air conditioners, also called unitary AC or unitary split systems. These systems include an outdoor unit with a condenser and a compressor, refrigerant lines, an indoor unit with an evaporator, and ducts to carry cooled air throughout a building. Central heat pumps are similar but offer the choice to either heat or cool the indoor space;
- Multi-split air conditioners and heat pumps. These systems include one or more outdoor unit(s) with a condenser and a compressor and multiple indoor units, each of which is connected to the outdoor unit by refrigerant lines. Non-ducted multi-splits provide cooled or heated air directly from the indoor unit rather than providing the air through ducts;
- Mini-split air conditioners and heat pumps. These systems include an outdoor unit with a condenser and a compressor and a single indoor unit that is connected to the outdoor unit by refrigerant lines. Non-ducted mini-splits provide cooled or heated air directly from the indoor unit rather than being carried through ducts;
- Rooftop AC units. These are units that combine the compressor, condenser, evaporator, and a fan for ventilation in a single package and may contain additional components for filtration and dehumidification. Most units also include dampers to control air intake. Rooftop AC units cool or heat outside air that is then delivered to the space directly through the ceiling or through a duct network. Rooftop AC units are common in small commercial buildings such as a single store in a mall with no indoor passageways between stores. They can also be set up in an array to provide cooling or heating throughout a larger commercial establishment such as a department store or supermarket;
- Window air conditioners. These are self-contained units that fit in a window with the condenser extending outside the window;
- PTACs and PTHPs. These are self-contained units that consist of a separate, un-encased combination of heating and cooling assemblies mounted through a wall. PTACs and PTHPs are intended for use in a single room and do not use ducts to carry cooled air or have external refrigerant lines. Typical applications include motel or dormitory air conditioners;
- Portable room air conditioners. These are self-contained units that are designed to be moved easily from room to room, usually having wheels. They may contain an exhaust hose that can be placed through a window or door to eject heat to the outside;
- Water-source heat pumps (WSHPs) and ground-source heat pumps (GSHPs). These are similar to unitary split systems except that heat is ejected (when in cooling mode) from the condenser through a second circuit rather than directly with outside air. The second circuit transfers the heat to the ground, groundwater, or another body of water such as a lake using water, or a brine if temperatures would risk freezing. Some systems can perform heating in a similar matter with the refrigerant circuit running in reverse; regardless, the term ''heat pump'' is most often used; and
- Variable refrigerant flow/variable refrigerant volume systems. These are engineered direct expansion (DX) multi-split systems incorporating the following: a split system air-conditioner or heat pump incorporating a single

refrigerant circuit that is a common piping network to two or more indoor evaporators each capable of independent control, or compressor units. VRF systems contain a single module outdoor unit or combined module outdoor units with at least one variable capacity compressor that has three or more stages, with air or water as the heat source.

All of these types of air-conditioning equipment would be subject to the restrictions on the use of HFCs under this proposal, if finalized.

Common HFCs and blends containing HFCs used in mini-splits, multi-splits, unitary splits, and VRF are R–410A and to a lesser extent, R–407C, with GWPs of 2,090 and 1,770, respectively. Residential split systems are commonly shipped with a refrigerant charge that is then ''balanced'' by the technician once the equipment is installed in its place of use. Larger commercial sized units often are not pre-charged with refrigerant but may contain a nitrogen ''holding charge'' for shipping.

Other types of equipment, such as window air conditioners, PTACs, PTHPs, rooftop AC units, portable room air conditioners, and often GSHPs and WSHPs, are self-contained equipment with the condenser, compressor, evaporator, and tubing all within casing in a single unit. Such self-contained equipment is generally charged with refrigerant in a factory and later installed in its place of use. Common HFCs and blends containing HFCs used in such equipment include R–410A and R–134a.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Residential and Light Commercial Air Conditioning and Heat Pumps

EPA granted petitions submitted by EIA, AHRI, CARB, and AHAM which requested restrictions on the use of HFCs in the residential and light commercial air conditioning and heat pump subsector. EIA's petition refers to this category as ''residential and non-residential''; AHRI refers to this category as ''residential and light commercial''; and CARB, in its recently finalized regulation, refers to the ''specific end-uses'' of ''room/wall/window air-conditioning equipment, PTACs, PTHPs, portable air-conditioning equipment,'' and ''other air-conditioning (new) equipment, residential and nonresidential.'' [121] AHAM did not refer to this category in general but rather specifically requested restrictions on the use of HFCs for room ACs with and without electric heat and a capacity of 25,000 Btu/hr or less and for portable ACs. For the purposes of this action, EPA is considering this equipment under the subsector ''residential and light commercial air conditioning and heat pumps.''

The EIA, CARB, and AHRI petitions requested a GWP limit of 750 for HFCs used in this subsector with a compliance date of January 1, 2025, for most types of equipment and January 1, 2026, for VRF systems. CARB also requested a 750 GWP and compliance date of January 1, 2023, for window, room and portable ACs.

AHAM requested a GWP limit of 750 for substances used in portable ACs and in the two types of room ACs included in their petition, with two separate compliance deadlines—January 1, 2023, for portable ACs and for room ACs without electric heat and a capacity of 25,000 Btu/hr or less and January 1, 2024, for room ACs with electric heat and a capacity of 25,000 Btu/hr or less. AHAM requested that room AC products with a capacity over 25,000 Btu/hr be excluded from restrictions, since these products require charge sizes that for flammable refrigerants would exceed the limits allowed in UL Standard 60335–2–40, are hermetically sealed, and comprise less than 2 percent of total shipments. Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for residential and light commercial air-conditioning and heat pumps?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 700 or greater for new residential and light commercial air-conditioning units and heat pumps beginning January 1, 2025. For new VRF systems, EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 700 or greater beginning January 1, 2026.

EPA is proposing to prohibit the use of regulated substances that have a GWP of 700 or greater, in part, because there are multiple lower-GWP substitutes available for use or will soon be available for use in residential and light commercial air-conditioning and heat pump applications. For example, R–452B, HFC–32, and R–454B have respective GWPs of approximately 698, 675, and 465, respectively, and are acceptable for use under the SNAP program. Considering the lack of refrigerants with a GWP between 700 and 750, EPA is proposing to base its GWP cutoff at 700 rather than at 750.

EPA is proposing to prohibit HFCs and blends containing an HFC in new residential and light commercial AC and heat pumps by January 1, 2025, and in new VRF systems by January 1, 2026, depending on the specific application. January 1, 2025, is roughly three and a half years after EPA's SNAP program issued listings allowing use of five lower-GWP refrigerants for residential and light commercial AC and heat pumps. Further, EPA anticipates that states will adopt the 2021 revised versions of the International Building Code and the Residential Building Code that allows for use of several lower-GWP refrigerants that exhibit lower flammability (2L flammability classification). EPA understands that by 2025 building codes may be updated or updates will be under consideration which is relevant for some but not all of the potential lower-GWP HFC refrigerants and other non-HFC substitutes. Several OEMs have also indicated that they intend to switch to using A2L refrigerants (*e.g.,* R–454B, HFC–32) once relevant codes have been updated to allow their use.[122] [123]

In the case of VRF systems, the petitioner AHRI suggested a later date of January 1, 2026. EPA agrees that more time is required for this subsector as these AC systems are larger and more complicated—this additional time is needed for designing, testing, and implementing the use of substitutes in these systems. EPA notes that California has already adopted these dates for a transition to lower-GWP refrigerants; thus, if EPA adopts the same dates for this subsector, this would allow for consistency nationwide.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 700 or greater for HFCs and blends containing HFCs used in residential and light commercial air-conditioning units and heat pumps and proposing a GWP limit of 700 for VRF systems. EPA is also seeking comment on the additional year proposed for VRF systems. Further, EPA is seeking comment on whether the Agency should provide an exception for room AC products with a capacity over 25,000 Btu/hr, or some other threshold, and any issues that these products may

[121] California Code of Regulations, Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration, Stationary Air-conditioning, and Other End-uses. Available at: *https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hfc2020/frorevised.pdf.*

[122] Turpin, J., R–454B Emerges as a Replacement for R–410A, ACHR News, August 2020. Available at: *https://www.achrnews.com/articles/143548-r-454b-emerges-as-a-replacement-for-r-410a.*

[123] Turpin, J., Manufacturers Eye R–32 to Replace R–410A, ACHR News, August 2020. Available at: *https://www.achrnews.com/articles/143422-manufacturers-eye-r-32-to-replace-r-410a.*

face in using substitutes with GWPs less than 700.

j. Residential Dehumidifiers

Background on Residential Dehumidifiers

Residential dehumidifiers are primarily used to remove water vapor from ambient air or directly from indoor air for comfort or material preservation purposes in the context of the home. While AC systems often combine cooling and dehumidification, residential dehumidifiers only serve the latter purpose and are often used in homes for comfort purposes. This equipment is self-contained and circulates air from a room, passes it through a cooling coil, and collects condensed water for disposal.

Some dehumidifiers for residential or light commercial use are integrated with the space air-conditioning equipment, for instance via a separate bypass in the duct through which air is dehumidified, a dehumidifying heat pipe across the indoor coil, or other types of energy recovery devices that move sensible and/or latent heat between air streams (*e.g.,* between incoming air and air vented to the outside). EPA includes this subsector under residential or light commercial AC system or heat pump.

Similar to other subsectors under residential and light commercial AC and heat pumps, the majority of residential dehumidifiers introduced previously used R–410A to originally replace R–22.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Residential Dehumidifiers

EPA granted petitions submitted by CARB and AHAM which requested restrictions on the use of HFCs for residential dehumidifiers. The CARB petition requested a GWP limit of 750 as of January 1, 2023, for HFCs used in this subsector. The AHAM petition also requested a GWP limit of 750 and requested a compliance date of two years after EPA approval of HFC–32 refrigerant for dehumidifiers. EPA understands this latter request as referring to the two years after the date that EPA finalizes an acceptable listing for HFC–32 in residential dehumidifiers under the SNAP program. Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for residential dehumidifiers?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 700 or greater for residential dehumidifiers beginning January 1, 2025. This proposed GWP limit would apply to new residential dehumidifiers.

EPA is proposing to restrict the use of regulated substances that have a GWP greater than 700 because there are refrigerants listed as acceptable under the SNAP program, or refrigerants that have been proposed to be listed as acceptable, that have GWPs of 700 or lower. For example, R–513A with a GWP of 630 is listed as acceptable. Through a separate rulemaking under the SNAP program, EPA has also proposed to list as acceptable, subject to use conditions, refrigerants such as R–452B, HFC–32, and R–454B, with respective GWPs of approximately 698, 675, and 465 (87 FR 45508, July 28, 2022).

EPA is proposing to restrict the use of regulated substances in residential dehumidifiers as of January 1, 2025. CARB petitioned EPA for January 1, 2023, as the date for restrictions of HFCs for this subsector; however, that date would not be allowable under subsection (i)(6) of the AIM Act. AHAM's petition requested that EPA establish a compliance date that is two years after the date that EPA would finalize an acceptable listing for HFC–32. As noted, EPA has issued the proposed rule and intends to finalize a rule in 2023. EPA is not tying the proposed date for compliance with a restriction under this subsection of the AIM Act for dehumidifiers to the timing for the issuance of a final rule under the SNAP program. However, EPA is proposing a date that is consistent with most other dates for restrictions in this proposed rule; EPA is proposing restrictions on HFCs in this subsector that would apply beginning January 1, 2025. That said, the Agency will keep abreast of the relevant SNAP rulemakings.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 700 or greater for HFCs and blends containing HFCs used in residential dehumidifiers.

k. Motor Vehicle Air Conditioning (MVAC)

Background on MVAC

MVAC systems cool the passenger compartment of light-duty (LD) vehicles, heavy-duty (HD) vehicles (*e.g.,* large pick-ups, delivery trucks, and semi-trucks), nonroad (also called off-road) vehicles, buses, and passenger rail vehicles. Systems used to cool passenger compartments in LD, HD, and nonroad vehicles are typically charged during vehicle manufacture and the main components are connected by flexible refrigerant lines. The vehicle types that are addressed in this action include passenger cars (including electric and hybrid passenger cars) and light-duty trucks,[124] referred to jointly in this action as LD vehicles, limited types of HD vehicles (*i.e.,* medium-duty passenger vehicles (MDPVs),[125] HD pickup trucks, and complete HD vans), and certain nonroad vehicles (*i.e.,* agricultural tractors greater than 40 HP; self-propelled agricultural machinery; compact equipment; construction, forestry, and mining equipment; and commercial utility vehicles (UTVs)).

The vehicle types covered in this proposed rule include LD, MD, and HD hybrids, plug-in hybrid electric vehicles (PHEVs), electric vehicles (EVs), and fuel cell vehicles (FCVs).[126] Hybrids, PHEVs and EVs are currently a small portion of the fleet but are expected to grow rapidly, as most manufacturers have made recent public announcements committing to billions of dollars in research towards electrification, and in some cases, manufacturers have announced specific targets for entirely phasing out internal combustion engines.[127 128 129 130] For example, more than 300,000 EVs, PHEVs, and FCVs were produced in the 2020 model year (MY).[131] Of those vehicles, about 78 percent were EVs, 22 percent were PHEVs, less than 1 percent were FCVs. As more EVs are introduced into the market, use of heat pumps will

[124] Defined at 40 CFR 86.1803–01.

[125] Ibid.

[126] Hybrid vehicles store some propulsion energy in a battery, and often recapture braking energy, allowing for a smaller, more efficiently operated engine. Plug-in hybrids operate similarly to hybrids but their batteries can be charged from an external source of electricity, and generally have a longer electric only operating range. Electric vehicles operate only on energy stored in a battery that is charged from an external source of electricity, and rely exclusively on electric motors for propulsion instead of an internal combustion engine. Fuel cell vehicles use a fuel cell stack to create electricity from an onboard fuel source (usually hydrogen), which then powers an electric motor or motors to propel the vehicle.

[127] EPA, 2021. The 2021 EPA Automotive Trends Report. Available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013L1O.pdf.*

[128] U.S. Department of Energy. Model Year 2022 Alternative Fuel and Advanced Technology Vehicles. Available at: *https://afdc.energy.gov/vehicles/search/download.pdf?year=2022.*

[129] U.S. Department of Energy. Electric Vehicle Basics. Available at: *https://afdc.energy.gov/files/u/publication/electric_vehicles.pdf.*

[130] Preston, B., Bartlett, J. ''Automakers Are Adding Electric Vehicles to Their Lineups. Here's What's Coming.'' Consumer Reports. Available at: *https://www.consumerreports.org/hybrids-evs/why-electric-cars-may-soon-flood-the-usmarket-a9006292675/.*

[131] EPA, 2021. The 2021 EPA Automotive Trends Report. Available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013L1O.pdf.*

increase to redirect heat into vehicle cabins and control temperatures. This may lead to the development of more energy efficient, alternative refrigerants and technologies (*e.g.,* dual-loop systems) for EV MVAC systems and heat pumps in electrified vehicles, similar to SAE International's current, industry-led Cooperative Research Program assessing alternative refrigerants for heat pumps.[132] [133]

Vehicle Weight Classification

TABLE 5—VEHICLE WEIGHT CLASSIFICATION

Class	Light-duty vehicles	Heavy-duty vehicles						
	1–2a	2b & MDPV	3	4	5	6	7	8
GVWR (lb)	<8,500	8,501–10,000	10,001–14,000	14,001–16,000	16,001–19,500	19,501–26,000	26,001–33,000	>33,000

Vehicle weight classes and categories are used by the Federal Highway Administration, the U.S. Census Bureau, and EPA. The vehicle weight classes are defined by the Federal Highway Administration and are used consistently throughout the industry. These classes, 1 through 8, are based on gross vehicle weight rating (GVWR), the maximum weight of the vehicle, as specified by the manufacturer. GVWR includes total vehicle weight plus fluids, passengers, and cargo. EPA defines vehicle categories, also by GVWR, for the purposes of emissions and fuel economy certification. As illustrated in Table 5, EPA classifies vehicles as LD (GVWR <8,500 pounds) or HD (GVWR >8,501 pounds). MDPVs, HD pickup trucks, and complete HD vans are Class 2b and 3 vehicles with GVWRs between 8,501 and 14,000 pounds. MDPVs are classified as HD vehicles based on their GVWR, but due to their similarities to LD vehicles they are subject to the GHG emissions standards established for LD trucks.

The HD vehicle types addressed in this action (*i.e.,* MDPVs, HD pickup trucks, and HD vans) are technologically similar to LD vehicles and most are manufactured by companies with major LD markets in the United States and in a similar manner to LD vehicles.[134] Ford, General Motors, and Stellantis (formerly Fiat Chrysler Automobiles) produce approximately 100 percent of HD pickup trucks and approximately 95 percent of HD vans, with Mercedes-Benz (formerly Daimler) and Nissan producing the remaining approximately five percent of HD vans.[135] In many cases, these types of HD vehicles are versions of their LD counterparts.[136] [137] The primary difference between HD pickup trucks and vans and their LD counterpart vehicles is that HD pickups and vans are occupational or work vehicles that are designed for much higher towing and payload capabilities than are LD pickups and vans.

Complete vehicles are sold by vehicle manufacturers to end-users with no secondary manufacturer making substantial modifications prior to registration and use. Incomplete vehicles are sold by vehicle manufacturers to secondary manufacturers without the primary load-carrying device or container attached. With regard to HD pickup trucks and vans, 90 percent are sold as complete vehicles while only 10 percent are sold as incomplete (80 FR 40331, July 13, 2015). Of the 10 percent of HD pickups and vans that are sold as incomplete vehicles to secondary manufacturers, about half are HD pickup trucks and half are HD vans.

Examples of modifications by secondary manufacturers to HD pickup trucks are installing a flatbed platform or tool storage bins. EPA is not aware of any equipment added by a secondary manufacturer to an incomplete HD pickup truck that would result in a secondary manufacturer modifying or adjusting the already installed MVAC system to provide cooling capacity.

Nonroad Vehicles

Nonroad vehicles can be grouped into several categories (*e.g.,* agriculture, construction, recreation, and many other purposes).[138] The nonroad vehicles addressed in this action are:

- Agricultural tractors greater than 40 HP (including two-wheel drive, mechanical front-wheel drive, four-wheel drive, and track tractors) that are used for various agricultural applications such as farm work, planting, landscaping, and loading;[139] [140]
- Self-propelled agricultural machinery (including combines, grain and corn harvesters, sprayers, windrowers, and floaters) that are primarily used for harvesting, fertilizer, and herbicide operations;[141]
- Compact equipment (including mini excavators, turf mowers, skid-steer loaders, and tractors less than 40 HP) that are primarily used for agricultural operations and residential, commercial, and agricultural landscaping;[142]
- Construction, forestry, and mining equipment (including excavators, bulldozers, wheel loaders, feller bunchers, log skidders, road graders, articulated trucks, sub-surface machines, horizontal directional drill, trenchers, and tracked crawlers) that are primarily used to excavate surface and subsurface materials during construction, landscaping, and road maintenance and building;[143] and
- Commercial UTVs that are primarily used for ranching, farming, hunting/fishing, construction,

[132] Volume 1: Progress Report, Technology and Economic Assessment Panel, UNEP, September 2021. Available at: *https://ozone.unep.org/system/files/documents/TEAP-2021-Progress-report.pdf.*

[133] SAE International, 2022. Thermal Management Refrigerant Cooperative Research Program.

[134] This is more broadly true for HD pickup trucks than vans because every manufacturer of HD pickup trucks also makes LD pickup trucks, while only some HD van manufacturers also make LD vans. (80 FR 40148, July 13, 2015).

[135] EPA, 2016. Regulatory Impact Analysis: Proposed Rulemaking for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2. August 2016. Available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF.*

[136] ICCT, 2015. International Council on Clean Transportation: Regulatory Considerations for Advancing Commercial Pickup and Van Efficiency Technology in the United States. Available at: *https://theicct.org/publication/regulatory-considerations-for-advancing-commercial-pickup-and-van-efficiency-technology-in-the-united-states/.*

[137] U.S. News, 2022. What Makes a Pickup Truck Heavy Duty? Available at: *https://cars.usnews.com/cars-trucks/what-makes-trucks-heavy-duty.*

[138] EPA, 2021. Basic Information about the Emission Standards Reference Guide for On-road and Nonroad Vehicles and Engines. Available online at *https://www.epa.gov/emission-standards-reference-guide/basic-information-about-emission-standards-reference-guide-road* and at *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100K5U2.PDF?Dockey=P100K5U2.PDF.*

[139] Wagner, 2021. May 24, 2021, email from John Wagner of the Association of Equipment Manufacturers to EPA. Available in the docket.

[140] AEM, 2021. Appendix A: Machine Forms as Classified by AEM Membership. Available in the docket.

[141] Ibid.

[142] Ibid.

[143] Ibid.

landscaping, property maintenance, railroad maintenance, forestry, and mining.[144]

These nonroad vehicles are almost exclusively used and operated by professionals (*e.g.,* agricultural owners or skilled employees/operators) and vary by size, weight, use, and/or horsepower.[145] For example, commercial UTVs typically weigh between 1,200 and 2,400 pounds, while agricultural tractors >40 HP typically weigh between 39,000 and 50,000 pounds.[146 147] MVAC systems in these nonroad vehicles can have charge sizes ranging from 650 grams (23 ounces) to 3,400 grams (120 ounces) depending on the manufacturer and cab size, compared to a range of 390 grams (14 ounces) to 1,600 grams (56 ounces) for MVAC systems in light and medium duty passenger vehicles, HD pickups, and complete HD vans.[148] Additionally, unlike onroad passenger vehicles, for example, nonroad vehicles are limited to non-highway terrain (*e.g.,* fields, construction sites, forests, and mines), have more robust components, are operated at low working speeds, and there are typically a limited number of vehicles in the same location.

Information Contained in the Granted Petitions Concerning the Use of HFCs for MVAC

EPA granted two petitions which requested restrictions on the use of HFCs for applications related to MVAC. The first was submitted by NRDC, the Colorado Department of Public Health & Environment, and the Institute for Governance and Sustainable Development and requested that EPA restrict the use of HFC–134a in LD vehicles beginning January 1, 2023. The second petition was submitted by CARB requesting that EPA restrict the use of HFC–134a in new LD vehicles in MY2021. Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for MVAC?

EPA is proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 150 or greater for MVAC systems in newly manufactured LD vehicles starting in MY 2025, as of one year after publication of a final rule, including vehicles manufactured exclusively for export. EPA is also proposing to restrict the use of HFCs and blends containing HFCs that have a GWP of 150 or greater for MVAC systems in limited types of HD vehicles in Class 2b–3 (*i.e.,* newly manufactured MDPVs, HD pickup trucks, and complete HD vans), and certain nonroad vehicles (*i.e.,* agricultural tractors greater than 40 HP; self-propelled agricultural machinery; compact equipment; construction, forestry, and mining equipment; and commercial UTVs) starting in MY 2026, including vehicles manufactured exclusively for export.

For LD vehicles, EPA is proposing to restrict the use of HFCs and blends containing HFCs starting in MY 2025, as of one year after publication of a final rule, because three technologically achievable substitutes, R–744, HFO–1234yf, and HFC–152a, meet the proposed GWP limit of 150. HFO–1234yf is a chemical substance identified as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 754–12–1) and has a GWP of <1.[149 150] HFC–152a and R–744 have GWPs of 124 and 1, respectively. Under SNAP, HFO–1234yf is listed as acceptable, subject to use conditions, for new LD vehicles, MDPV, HD pick-up trucks, complete HD vans, and certain types on nonroad vehicles.[151] R–744 and HFC–152a are listed under SNAP as acceptable, subject to use conditions, in new LD and HD vehicles in the United States;[152 153] however, EPA is not aware of the use or development of HFC–152a or R–744, in any LD or HD vehicle in the United States. Use conditions for these refrigerants under the SNAP program require labeling and the use of unique fittings. The use conditions also mitigate flammability and toxicity risks.

HFO–1234yf has gained significant market share in LD vehicles in the United States since its introduction in MY 2013.[154] According to the 2021 EPA Automotive Trends Report, approximately 85 percent of MY 2020 LD vehicles sold used HFO–1234yf and some manufacturers have implemented HFO–1234yf across their entire vehicle brands.[155] EPA considers MY 2025 the date by which automobile manufacturers would be able to redesign the MVAC system of the remaining 15 percent of LD vehicle models for use with a lower-GWP refrigerant, consistent with the use conditions.

Additionally, lower-GWP refrigerants, such as HFO–1234yf, are predominantly being used in new LD vehicles in Europe and Japan.[156] For example, the proposed GWP limit of 150 for LD vehicles harmonizes with the EU's Mobile AC Directive 2006/40/EC,[157] which is aimed at reducing emissions of HFC–134a from LD MVAC systems. The directive sets a GWP limit of 150 for refrigerants used in MVAC systems installed in any LD vehicle sold in the European market after 2017, regardless of its model year. This proposed rule would harmonize with the Directive and allow adequate lead time for manufacturers to transition to lower GWP refrigerants. Similar to the Directive, EPA is proposing to limit the GWP of refrigerants used in LD MVACs rather than specifying the use of a particular refrigerant or system.

EPA previously considered the MY by which manufacturers of LD vehicles would be able to transition from use of

[144] Ibid.

[145] EPA, 2021. Basic Information about the Emission Standards Reference Guide for On-road and Nonroad Vehicles and Engines. Available online at *https://www.epa.gov/emission-standards-reference-guide/basic-information-about-emission-standards-reference-guide-road* and in the docket.

[146] Heavy-duty vehicles are often subdivided by vehicle weight classifications, as defined by the vehicle's gross vehicle weight rating (GVWR), which is a measure of the combined curb (empty) weight and cargo carrying capacity of the truck. Heavy-duty vehicles have GVWRs above 8,500. See *https://www.epa.gov/emission-standards-reference-guide/vehicle-weight-classifications-emission-standards-reference-guide.*

[147] Wagner, 2021. May 24, 2021, email from John Wagner of the Association of Equipment Manufacturers to EPA. Available in the docket.

[148] ICF, 2016. Technical Support Document for Acceptability Listing of HFO–1234yf for Motor Vehicle Air Conditioning in Limited Heavy-Duty Applications. Available in the public docket.

[149] Nielsen *et al.,* 2007. Atmospheric chemistry of CF3CF=CH2: Kinetics and mechanisms of gas-phase reactions with Cl atoms, OH radicals, and O3. *Chemical Physics Letters* 439, 18–22. Available at: *www.lexissecuritiesmosaic.com/gateway/FedReg/network_OJN_174_CF3CF=CH2.pdf.*

[150] Papadimitriou *et al.,* 2007. CF3CF=CH2 and (Z)-CF3CF=CHF: temperature dependent OH rate coefficients and global warming potentials. *Phys. Chem. Chem. Phys.,* 2007, Vol. 9, p. 1–13. Available at: *http://pubs.rsc.org/en/Content/ArticleLanding/2008/CP/b714382f.*

[151] HFO–1234yf is listed as acceptable, subject to use conditions, for new LD passenger cars and trucks (76 FR 17488, March 29, 2011), new MDPVs, HD pickup trucks, and complete HD vans (81 FR 86778, December 1, 2016), and new nonroad vehicles (86 FR 26276, May 4, 2022) at 40 CFR part 82, subpart G.

[152] CO_2 is listed as acceptable, subject to use conditions, for new vehicles only at 40 CFR part 82, subpart G; final rule published June 6, 2012 (77 FR 33315).

[153] HFC–152a is listed as acceptable, subject to use conditions, for new vehicles only at 40 CFR part 82, subpart G; final rule published June 12, 2008 (73 FR 33304).

[154] "Model year" is defined at 40 CFR 85.2302 and "means the manufacturer's annual production period (as determined under 40 CFR 85.2304) which includes January 1 of such calendar year, provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year."

[155] EPA, 2021. The 2021 EPA Automotive Trends Report. Available at: *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013L1O.pdf.*

[156] Volume 1: Progress Report, Technology and Economic Assessment Panel, UNEP, September 2021. Available at: *https://ozone.unep.org/system/files/documents/TEAP-2021-Progress-report.pdf.*

[157] European Commission, 2006. Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air-conditioning systems in motor vehicles and amending. Available at: *https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0040.*

HFC–134a for LD vehicles in support of the July 2015 SNAP final rule (80 FR 42870, July 20, 2015) and greenhouse gas and fuel economy standards for MY 2017–2025 LD vehicles issued jointly by EPA and National Highway Traffic Safety Administration on August 28, 2012.[158] For this action, EPA is proposing that restrictions on the use of HFCs and blends containing HFCs that have a GWP of 150 or greater for LD vehicles, including vehicles manufactured exclusively for export, start in MY 2025 and become effective one year after publication of a final rule. This is because a manufacturer's annual production period or model year could be as early as January 1 of the previous calendar year. Therefore, MY 2025 vehicles could be manufactured as early as January 1, 2024, which may be earlier than the effective date of a final rule. EPA is seeking comment on whether the Agency should propose restrictions for LD vehicles with a calendar year compliance date (*e.g.,* January 1, 2025) rather than a model year.

For MDPVs, HD pickup trucks, complete HD vans, and certain nonroad vehicles addressed in this action, EPA is proposing to restrict the use of HFCs and blends containing HFCs starting MY 2026, because at least three technologically achievable substitutes, R–744, HFO–1234yf, and HFC–152a, meet the proposed GWP limit of 150. EPA is also seeking comment on whether the Agency should propose restrictions for MDPVs, HD trucks, complete HD vans, and certain nonroad vehicles with a calendar year compliance date (*e.g.,* January 1, 2026) rather than a model year.

HFO–1234yf was listed as acceptable, subject to use conditions, in 2016 under SNAP for new MDPVs, HD pickup trucks, complete HD vans and is in use or under various stages of development for these vehicle types. Because of the similarities in the MVAC systems used for these vehicles and LD vehicles, EPA considers January 1, 2026, the date by which it will be feasible for manufacturers to safely, but expeditiously, transition MVAC systems for these vehicle types.

EPA is proposing that the GWP limit of 150 or greater for MVAC systems apply to vehicles covered in this proposed rule that are manufactured exclusively for export. In the July 2015 SNAP final rule (80 FR 42870, July 20, 2015), based on comments received on the proposed rule (79 FR 46126, August 6, 2014), EPA established a narrowed use limit for MVAC systems in LD vehicles exported to countries that did not have infrastructure to service vehicles containing the alternatives found to pose less overall risk. The narrowed use limit allows for the use of HFC–134 in MVACs until MY 2026. EPA understands that certain countries to which vehicles are exported do not, and may not for some period of time, have in place the infrastructure for servicing MVAC systems with lower-GWP, flammable refrigerants (*e.g.,* HFO–1234yf and HFC–152a). EPA seeks comment regarding the technical feasibility of servicing MY 2027 and later model vehicles manufactured for export with lower-GWP refrigerants (*e.g.,* HFO–1234yf).

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs used in MVAC systems in newly manufactured LD vehicles starting in MY 2025, as of one year after publication of a final rule, including vehicles manufactured exclusively for export. EPA is also requesting comment on the proposal to restrict the use of HFCs and blends containing HFCs that have a GWP of 150 or greater for MVAC systems in limited types of HD vehicles in Class 2b–3 and certain nonroad vehicles starting in MY 2026, including vehicles manufactured exclusively for export. Additionally, EPA is requesting comment on the proposal to establish GWP limit restrictions for MVAC based on calendar year rather than model year.

4. Foam Blowing

Background

Foams are plastics (such as phenolic, polyisocyanurate, polyolefin, polyurethane, or polystyrene) that are manufactured using blowing agents to create bubbles or cells in the material's structure. The foam plastics manufacturing industries, the markets they serve, and the blowing agents used are extremely varied. The range of uses includes building materials, appliance insulation, cushioning, furniture, packaging materials, containers, flotation devices, filler, sound proofing, and shoe soles. Some foams are rigid with closed cells that still contain the foam blowing agent, which can contribute to the foam's ability to insulate. Other foams are open-celled, with the foam blowing agent escaping at the time the foam is blown, as for flexible foams.

Historically, a variety of foam blowing agents have been used for these applications. CFCs and HCFCs were typically used. In the early 1990s, ahead of the CAA and Montreal Protocol CFC phaseout, regulations implementing section 610 of the CAA included bans on the sale or distribution of foam products blown with CFCs and HCFCs, with an exception only for HCFCs used for foam insulation products as defined at 40 CFR 82.62. Blowing agents which remain in a liquid state at room temperature have been used more commonly in polyisocyanurate, polyurethane and phenolic foams, such as CFC–11, CFC–113, HCFC–141b, HFC–245fa, and HFC–365mfc. Blowing agents that are gases at room temperature have more commonly been used in polyolefin and polystyrene foams, such as CFC–12, HCFC–22, HCFC–142b, HFC–134a, and HFC–152a.

The foam blowing subsectors addressed in this action include:

- Flexible polyurethane includes open-cell foam in furniture, bedding, chair cushions, and shoe soles;
- Integral skin polyurethane includes open-cell foam used in car steering wheels, dashboards, upholstery, and shoe soles;
- Phenolic insulation board and bunstock includes insulation for roofing and walls;
- Polyolefin (*e.g.,* polyethylene, polypropylene) includes foam sheets and tubes;
- Polystyrene—extruded boardstock and billet includes closed cell insulation for roofing, walls, floors, and pipes;
- Polystyrene—extruded sheet includes closed cell foam for packaging and buoyancy or flotation;
- Rigid polyurethane—appliance foam includes insulation foam in domestic refrigerators and freezers and hot water heaters;
- Rigid polyurethane—slabstock and other includes insulation for panels and pipes, taxidermy foam, and miscellaneous uses of rigid polyurethane foam;
- Rigid polyurethane—commercial refrigeration includes insulation for vending machines, coolers, commercial refrigeration equipment, pipes, shipping containers for perishable goods, and refrigerated transport vehicles;[159]
- Rigid polyurethane—sandwich panels include insulation panels for walls and metal doors;
- Rigid polyurethane and polyisocyanurate laminated boardstock

[158] 77 FR 62624, 62807–810 (October 15, 2012); see also 75 FR 25325, 25431–32 (May 7, 2010) (discussing the same issue for MY 2012–2016 light-duty vehicles).

[159] As described in greater detail in section VII.C of this preamble above, EPA is proposing an exemption for certain applications as long as they are receiving application-specific allowances under subsection (e)(4)(B) of the Act, including structural composite preformed polyurethane foam for trailer use.

includes laminated board insulation for roofing and walls;

- Rigid polyurethane—marine flotation foam includes buoyancy or flotation foams; [160] and
- Spray foam is applied in situ and includes insulation for building envelopes, roofing, walls, doors, and other construction uses, as well as foam for building breakers for pipelines. Spray foam is broken down further into rigid polyurethane high-pressure two-component, rigid polyurethane low-pressure two-component, and rigid polyurethane one-component foam sealants. These three applications vary in the types of systems used to apply them (one component or two-component, high pressure or low pressure), who uses such systems (contractors using personal protective equipment, or consumers), and how much is applied (large-scale applications within walls or on roofs of a residence or filling in cracks, leaks and gaps in a residence). For further information on those three applications, see the preamble to SNAP Rule 21 (81 FR 86778 at 86846–86847, December 1, 2016).

Information Contained in the Granted Petitions Concerning the Use of HFCs for Foam Blowing

EPA granted five petitions which requested restrictions on the use of HFCs for foam blowing. Petitions were submitted separately by NRDC and by CARB, both requesting that EPA restrict certain HFCs in:

- Rigid Polyurethane (PU) and Polyisocyanurate Laminated Boardstock. Specifically, HFC–134a, HFC–245fa, HFC–365mfc and blends thereof;
- Rigid Polyurethane—Slabstock and Other. Specifically, HFC–134a, HFC–245fa, HFC–365mfc and blends thereof; Formacel TI, and Formacel Z–6;
- Rigid Polyurethane—Appliance Foam. Specifically, HFC–134a, HFC–245fa, HFC–365mfc and blends thereof; Formacel TI, and Formacel Z–6;
- Rigid Polyurethane—Commercial Refrigeration and Sandwich Panels. Specifically, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof; Formacel TI, and Formacel Z–6;
- Rigid Polyurethane—Marine Flotation Foam. Specifically, HFC–134a, HFC–245fa, HFC–365mfc and blends thereof; Formacel TI, and Formacel Z–6;
- Rigid PU—high-pressure two-component spray foam. Specifically, HFC–134a, HFC–245fa, and blends thereof; blends of HFC–365mfc with at least four percent HFC–245fa, and commercial blends of HFC–365mfc with 7 to 13 percent HFC–227ea and the remainder HFC–365mfc; and Formacel TI.
- Rigid PU—one-component foam sealants. Specifically, HFC–134a, HFC–245fa, and blends thereof; blends of HFC–365mfc with at least four percent HFC–245fa, and commercial blends of HFC–365mfc with 7 to 13 percent HFC–227ea and the remainder HFC–365mfc; and Formacel TI;
- Flexible Polyurethane. Specifically, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof;
- Integral Skin Polyurethane. Specifically, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof; Formacel TI, and Formacel Z–6;
- Polystyrene—Extruded Sheet. Specifically, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof; Formacel TI, and Formacel Z–6;
- Polystyrene—Extruded Boardstock and Billet. Specifically, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof; Formacel TI, Formacel B, and Formacel Z–6;
- Polyolefin. Specifically, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof; Formacel TI, Formacel Z–6;
- Phenolic Insulation Board and Bunstock. Specifically, HFC–143a, HFC–134a, HFC–245fa, HFC–365mfc, and blends thereof; and
- Rigid PU—low-pressure two-component spray foam. Specifically, HFC–134a, HFC–245fa, and blends thereof; blends of HFC–365mfc with at least four percent HFC–245fa, and commercial blends of HFC–365mfc with 7 to 13 percent HFC–227ea and the remainder HFC–365mfc; and Formacel TI.

NRDC requested a January 1, 2023, compliance date for most foam blowing subsectors listed, except for ''military or space- and aeronautics-related applications'' in rigid PU—high-pressure two-component spray foam and rigid PU—low-pressure two-component spray foam. For military or space- and aeronautics-related applications in these two subsectors, NRDC requested a January 1, 2025, compliance date. For all foam blowing subsectors, CARB requested that EPA ''not select later compliance dates than those provided in [SNAP] Rules 20 and 21.''

DuPont Performance Building Solutions submitted two petitions, one requesting that EPA restrict the use of HFC–134a in polystyrene—extruded boardstock and billet by January 1, 2023, and the second requesting that EPA restrict the use of HFCs [161] in rigid polyurethane—low-pressure two-component spray foam by January 1, 2022. The final petition for foams was submitted by the American Chemistry Council's Center for the Polyurethanes Industry (CPI), requesting that EPA restrict HFC use for the polyurethane industry.[162]

Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for foam blowing?

EPA is proposing to restrict the use of HFCs and blends containing HFCs with a GWP of 150 or greater for new phenolic insulation board and bunstock; polystyrene—extruded boardstock and billet; rigid polyurethane—appliance foam; rigid polyurethane—slabstock and other; rigid polyurethane—commercial refrigeration; rigid polyurethane—sandwich panels; rigid polyurethane—marine flotation foam; and spray foam (rigid polyurethane high-pressure two-component, rigid polyurethane low-pressure two component, rigid polyurethane one-component foam sealants) beginning January 1, 2025. For new flexible polyurethane; integral skin polyurethane; polyolefin; polystyrene—extruded sheet; and rigid polyurethane and polyisocyanurate laminated boardstock, EPA is proposing to fully restrict the use of HFCs and blends containing HFCs beginning January 1, 2025. This proposal would in effect prohibit the use of regulated substances for these foam subsectors.

HFCs have been widely used as blowing agents in rigid polyurethane insulation foam (*e.g.,* appliance, commercial refrigeration, sandwich panels, and spray) and polystyrene—extruded boardstock and billet in the United States since the phaseout of ODS blowing agents such as HCFC–141b and HCFC–142b, particularly where insulation value and flammability have been of greater concern. Over the past ten years, the number of available substitutes, both fluorinated and non-fluorinated, has increased, and the variety of uses for acceptable blowing agents has also expanded. These include carbon dioxide (GWP 0), light saturated

[160] As described in greater detail in section VII.C above, EPA is proposing an exemption for certain applications as long as they are receiving application-specific allowances under subsection (e)(4)(B) of the Act, including structural composite preformed polyurethane foam for marine use.

[161] DuPont's second petition requests EPA to ''. . . reinstate SNAP Rule 21 with regard to Rigid Polyurethane Low-pressure Two-component Spray Foam (2K–LP SPF) end-use. . .''.

[162] CPI requested that to reinstate the restrictions on the use of HFC foam blowing agents in the polyurethanes industry that were originally promulgated in EPA's Significant New Alternatives Policy (SNAP) Rules 20 and 21 effective January 1, 2023.

hydrocarbons with three to six carbons (GWP <1), methyl formate (GWP 11), HCFO–1233zd(E) (GWP 3.7), and HFO–1336mzz(Z) (GWP 2).

The opportunity to use HCs, CO_2, and water in the 1990s for a range of foam blowing applications in the United States has allowed many foam blowing subsectors and applications to transition directly from ODS to available substitutes, thus reducing the subsectors that rely on HCFCs or HFCs. HCs have been a lower-GWP and cost-effective substitute available for large parts of the foam sector, particularly in polystyrene—extruded sheet, rigid polyurethane—slabstock, rigid polyurethane and polyisocyanurate laminated boardstock, phenolic insulation board and bunstock, and polyolefin. HCs also are used in most of the other subsectors, but less extensively than in these five subsectors. In EPA's consideration of safety of available substitutes, flammability of foam blowing agents, including HCs, can be a concern, particularly for rigid polyurethane—two-component spray foam applications. Water is used broadly as a blowing agent in flexible polyurethane foam. In addition, other non-fluorinated compounds such as methyl formate and methylal are being used as blowing agents, alone or in combination with other compounds, particularly for use as a blowing agent in polyurethane foams.

EPA is proposing to exclude space vehicles, as defined in 40 CFR 84.3, from the proposed use restriction for spray foams. Such equipment faces unparalleled and highly demanding operating conditions and requires long lead times for their operation to be certified. This approach is consistent with EPA's CAA regulations where space vehicles were either exempted or given additional time to transition to substitute foam blowing agents.

A number of new fluorinated chemicals with lower GWPs have been introduced as foam blowing agents during the past several years. Many end users have indicated interest in these newer foam blowing agents, often to improve energy efficiency of the foam products manufactured with the foam blowing agent. For example, EPA's SNAP program has listed HCFO–1233zd(E), HFO–1234ze(E), HFO–1336mzz(E), and HFO–1336mzz(Z) as acceptable. These newer substitutes, which do not raise the flammability concerns of HCs, may prove appropriate for subsectors where highly flammable blowing agents raise safety concerns. The process and timing for retooling facilities that use the blowing agents or that incorporate the foam product into another product will vary depending on the substitute selected. Manufacturing facilities such as household refrigerator manufacturers have already been transitioning to lower-GWP substitutes for foam blowing. Production volumes for some of these newer substitutes are expanding rapidly to keep pace with growing commercial demands.

For some types of foam that have historically used gaseous blowing agents, HFC–152a or blends containing HFC–152a may be useful foam blowing agents with lower GWP than other HFCs. For example, the GWP of HFC–152a is 124, compared to 794 for HFC–365mfc, 1,030 for HFC–245fa, 1,430 for HFC–134a, and 4,470 for HFC–143a. Some manufacturers of polystyrene—extruded boardstock and billet have recently starting using blowing agents that are blends of HFC–152a and non-HFCs such as CO_2, HFO–1234ze(E), and/or HFO–1336mzz(Z), in order to transition away from using HFC–134a.

For the flexible polyurethane; integral skin polyurethane; polyolefin; polystyrene—extruded sheet; and rigid polyurethane and polyisocyanurate laminated boardstock subsectors, EPA understands that there is little or no use of HFCs. As noted, water and HCs are commonly used available substitutes used as blowing agents for flexible polyurethane, polyolefin, polystyrene—extruded sheet, and rigid polyurethane and polyisocyanurate laminated boardstock.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 or greater for HFCs and blends containing HFCs for new phenolic insulation board and bunstock; polystyrene—extruded boardstock and billet; rigid polyurethane—appliance foam; rigid polyurethane—slabstock and other; rigid polyurethane—commercial refrigeration; rigid polyurethane—sandwich panels; rigid polyurethane—marine flotation foam; and spray foam (rigid polyurethane high-pressure two-component, rigid polyurethane low-pressure two component, rigid polyurethane one-component foam sealants). EPA is also requesting comment on proposing to fully restrict HFCs and blends containing HFCs for new flexible polyurethane; integral skin polyurethane; polyolefin; polystyrene—extruded sheet; and rigid polyurethane and polyisocyanurate laminated boardstock.

5. Aerosols

Background on Aerosols

Aerosols use liquefied or compressed gas to propel active ingredients in liquid, paste, or powder form in precise spray patterns with controlled droplet sizes and amounts and many also contain a solvent. The propellant, typically a gas at atmospheric pressure but a pressurized liquid in the product canister, is emitted during use. In addition to propellants, some aerosols also contain a solvent. In some cleaning applications, the propellant disperses the solvent; in other applications, the solvent product and propellant solution are evenly mixed to improve shelf-life and product performance, such as by preventing dripping and ensuring uniform film thickness for spray paints. Consumer aerosols include products for personal and household use, such as hairspray, household cleaning products, and keyboard dusters. Technical aerosols are specialized products used solely in commercial and industrial applications, such as industrial spray paints and document preservation sprays.

In this proposed rule and as discussed previously in section VII.C of this preamble, EPA is proposing an exemption for certain applications as long as they are receiving application-specific allowances under subsection (e)(4)(B) of the Act, including for certain aerosol applications. Subsection (e)(4)(B)(iv) of the AIM Act lists six applications which are to ''receive the full quantity of allowances necessary, based on projected, current, and historical trends'' for the five-year period after enactment of the AIM Act. Under the implementing regulations at 40 CFR 84.13, the following applications which typically use aerosols are currently eligible to receive application-specific allowances for calendar years through 2025: (1) for a propellant in metered-dose inhalers, (2) in the manufacture of defense sprays, and (3) for mission-critical military end uses. Therefore, EPA is not proposing to apply the requirements under this rulemaking to these uses of HFCs in these applications at this time, since they are currently receiving application-specific allowances under 40 CFR 84.13.

Information Contained in the Granted Petitions Concerning the Use of HFCs for Aerosols

EPA granted three petitions, submitted by NRDC, CARB, and HCPA with the National Aerosol Association (HCPA/NAA), which requested restrictions on the use of HFCs for applications related to aerosol

propellants. NRDC submitted a petition under subsection (i) of the AIM Act that requested EPA to replicate the provisions contained in SNAP Rules 20 and 21. Petitioners requested a start date for the restrictions of January 1, 2023.

HCPA/NAA submitted a petition that requested EPA prohibit the use of specific HFCs as aerosol propellants starting January 1, 2023; however, the petitioners also requested that EPA except the use of HFCs in certain types of aerosols (*e.g.,* cleaning products for removal of grease, flux and other soils from electrical equipment).

CARB submitted a petition that requested EPA regulations should not limit States' ability to further limit or phase out the use of HFCs in their jurisdictions.

Additional information, including the relevant petitions, is available in the docket.

What restrictions on the use of HFCs is EPA proposing for aerosols?

EPA is proposing to restrict the use of HFCs and blends containing HFCs in new aerosols that have a GWP of 150 or greater beginning January 1, 2025. Available aerosol propellants that meet this proposed GWP limit include HFC–152a (GWP 124), HFO–1234ze(E) (GWP <1), dimethyl ether (GWP 1), saturated light hydrocarbons (GWP 3–10), and CO_2 (GWP 1). Manufacturers have transitioned to HFC–152a, saturated light hydrocarbons, HFOs, compressed gases, and oxygenated organic compounds (*e.g.,* dimethyl ether).[163] Available aerosol solvents that meet this GWP include HCFO–1233yd(Z) (GWP<1), HFO–1336mzz(Z) (GWP 2), methoxytridecafluoroheptene isomers (MPHE) (GWP 2.5), HCFO–1233zd(E) (GWP 3.7), HFE–569sf2 (GWP 59), and petroleum hydrocarbons.

On which topics is EPA specifically requesting comment?

EPA is requesting comment on proposing to establish a GWP limit of 150 for HFCs and blends containing HFCs used in aerosol products.

In SNAP Rule 20, EPA allowed the use of HFC–134a for certain aerosol propellant applications because of technical limitations, such as a requirement for non-flammability and/or a specific vapor pressure. EPA has received information that indicates some of these applications may still require use of HFC–134a as a propellant; however, from our own research, we are aware of possible substitutes with lower GWPs.[164] [165] Nevertheless, in this proposal, EPA is not explicitly proposing exceptions. We are taking comment on whether and why we should include a list of exceptions for propellants in this rulemaking that matches some or all of those included in SNAP Rule 20, namely:

- Cleaning products for removal of grease, flux and other soils from electrical equipment or electronics;
- Refrigerant flushes;
- Products for sensitivity testing of smoke detectors;
- Lubricants and freeze sprays for electrical equipment or electronics;
- Sprays for aircraft maintenance;
- Sprays containing corrosion preventive compounds used in the maintenance of aircraft, electrical equipment or electronics, or military equipment;
- Pesticides for use near electrical wires or in aircraft, in total release insecticide foggers, or in certified organic use pesticides for which EPA has specifically disallowed all other lower-GWP propellants;
- Mold release agents and mold cleaners;
- Lubricants and cleaners for spinnerettes for synthetic fabrics;
- Duster sprays specifically for removal of dust from photographic negatives, semiconductor chips, specimens under electron microscopes, and energized electrical equipment;
- Adhesives and sealants in large canisters;
- Document preservation sprays;
- Wound care sprays;
- Topical coolant sprays for pain relief; and
- Products for removing bandage adhesives from skin.

We also are interested in comments related to whether these uses that were excepted under SNAP Rule 20 have transitioned or can transition to a lower GWP propellant. If a commenter suggests including an exception for use of HFC–134a in an aerosol application, we would also be interested in any supporting data and information to explain why the exception is needed.

EPA is aware that HFC–43–10mee (GWP 1,640) and HFC–245fa (GWP 1,030) may still be in use as aerosol solvents, particularly in niche applications. We are taking comment on whether this or other HFCs are currently being used as aerosol solvents. If so, we ask that commenters include specific information on the application and what would be needed to transition to a lower GWP solvent.

G. For what additional sectors or subsectors is EPA requesting advance information on the use of HFCs?

Heat Pump Water Heaters

Heat pump water heaters (HPWH) are an energy-efficient alternative to electric-resistance and combustion water heaters. Instead of heating water by running electrical current through heating elements, or via fossil fuel combustion, HPWHs use a vapor-compression refrigerant cycle (the same basic mechanism used by standard heat pumps, air conditioners, and refrigerators) to transfer heat from the surrounding air to heat water.[166]

HPWHs are sold in the residential and commercial markets. The integral design comprises a condenser combined with the storage tank in one unit, where the heating components are installed at the top of the storage tank. A split-system design differs from the integral design in that it has a separate heat pump and storage tank, which can be connected via refrigerant lines or water lines. Most HPWHs historically and today contain the refrigerant HFC–134a. Some larger, commercial models use R–410A for the low temperature cycle and HFC–134a at the high temperature cycle.[167]

The Agency is seeking information on current uses of HFCs in HPWHs to inform potential future regulatory decisions. EPA is not proposing any regulatory requirements with respect to HPWHs in this rulemaking. EPA is specifically requesting information in response to the following questions:

1. What are the main reasons for the continued use of HFCs in HPWHs and for which applications?
2. What work is underway to identify suitable lower-GWP alternatives?
3. What would be the timeline for use of alternatives?

VIII. What are the proposed enforcement and compliance provisions?

EPA seeks to deter, identify, and penalize the import, manufacture, sale, purchase, or distribution of products and other activities that would be prohibited under the proposed

[163] Transitioning to Low-GWP Alternatives in Aerosols, EPA, December 2016. Available at: *https://www.epa.gov/sites/default/files/2016-12/documents/transitioning_to_low-gwp_alternatives_in_aerosols.pdf.*

[164] See email from HCPA to EPA, dated August 8, 2022.

[165] See *Evaluation of Continued Need for HFC–134a in Specific Aerosol Propellant Applications* memo in the docket.

[166] Heat Pump Water Heaters, U.S. Department of Energy. Information available at: *https://www.energy.gov/energysaver/heat-pump-water-heaters.*

[167] Kleefkens, Onno M.Sc., Heat Pump Centre, Refrigerants for Heat Pump Water Heaters, December 2019. Available at: *https://heatpumpingtechnologies.org/annex46/wp-content/uploads/sites/53/2020/10/hpt-an46-04-task-1-refrigerants-for-heat-pump-water-heaters-1.pdf.*

restrictions on the use of HFCs. Consistent with EPA's explanation in the Allocation Framework Rule, based on prior experience with the ODS phaseout in the United States, and global experiences transitioning from ODS and HFCs, EPA anticipates there will be attempts to introduce prohibited products in the United States.

Proposed tools for encouraging compliance and aiding enforcement include requirements to label regulated products, to report the import or manufacture of products using HFCs, a prohibition on import or manufacture of regulated products above the allowable GWP level or using a proposed restricted substance, and recordkeeping in support of the reporting requirement. EPA seeks to ensure a level playing field for the regulated community and discourage the illegal manufacture, import, distribution, purchase, or sale of prohibited products.

A. What is EPA proposing for labeling requirements?

EPA is proposing to require information on labels for regulated products in the sectors and subsectors covered by this proposed rule. Knowing what HFC or blend containing an HFC is used in a product is a necessary step to ensuring that the use of HFCs complies with the restrictions to be established through this rulemaking for the respective sectors and subsectors.

EPA is proposing on-product labeling for all regulated products in the covered sectors and subsectors of this proposed rule. For products that use HFCs or blends containing an HFC, EPA is proposing that the label include (1) the HFC or blend containing an HFC used in the product; (2) the GWP of that HFC or blend containing an HFC, labeled as ''global warming potential''; and (3) the date of manufacture, or at a minimum, the four-digit year.

For products that are intended for use with HFCs or blends containing an HFC, EPA is proposing that the unfilled products be labeled to indicate (1) the HFC(s) or blend(s) containing an HFC intended for use in the product; and (2) the GWP of the HFC(s) or blend(s) containing an HFC, labeled as ''global warming potential.'' EPA further proposes that at the time of first charge the label must be marked or a new label must be added to indicate: (1) the HFC or blend containing an HFC used in the product, (2) the GWP of that HFC or blend containing an HFC, labeled as ''global warming potential;'' and (3) the date of first charge, or at a minimum, the four-digit year. The new label would only need to include (1) and (2) if they are different from what is listed on the first label or if the first label indicates that the product is intended for use with multiple HFCs or blends containing HFCs. If a new label is added, it must be affixed near but not covering the original label. EPA proposes this structure as it would allow purchasers to determine whether the product is compliant and discourage the manufacture, import, distribution, purchase, or sale of products that are intended for use with prohibited HFCs and would allow the Agency to assess compliance of the products both before and after they are charged. EPA requests comment on whether field-charged products should be required to be labeled prior to being filled with an HFC or if the label should only be required once the product contains an HFC or blend containing an HFC. EPA also requests comment on how to best structure labeling requirements for products that are intended for use with multiple regulated substances and if requiring that each regulated substance that could be used be included on the label is useful.

Additionally, EPA is proposing that labels for products in the following subsectors indicate whether the full charge is greater than, equal to, or less than 200 pounds: (1) IPR, (2) retail food refrigeration—supermarket systems, (3) retail food refrigeration—remote condensing units, and (4) cold storage warehouses. The GWP limit varies based on that charge size threshold in these subsectors, thus EPA is proposing a statement about the charge size be included in the label for the purposes of ensuring compliance.

EPA notes that other markets including the EU and United Kingdom require labels with similar information requirements for many products containing HFCs.[168] [169] These labeling requirements that are already in place in other markets indicate that the requirements are feasible for the regulated entities.

EPA is proposing that the permanent label must be formatted as follows: (1) in English; (2) durable and printed or otherwise labeled on, or affixed to, the external surface of the product; (3) readily visible and legible; (4) able to withstand open weather exposure without a substantial reduction in visibility or legibility; and (5) displayed on a background of contrasting color. Additionally, EPA is proposing to require that labels or a description of the required information be clearly included in product information, either in the text description or photo of the product, for products being sold electronically through eCommerce platforms. Regulated products would need to have the required information clearly visible in either the photos of the product or the description of the item. If a regulated product is contained within a box or other overpack that reaches the ultimate consumer, EPA is proposing that the exterior packaging must also contain a label consistent with the formatting requirements described previously. For imported products, labels must be visible and readily available for inspection.

EPA requests comment regarding whether on-product labels may not be practicable for certain products. If such products are identified, commenters should provide information on alternative labeling methods that EPA should consider in those instances. One such alternative could be including the required information on packaging materials with the product (*e.g.,* tag, pamphlet, or box containing the product). This associated packaging would need to be present with the product at the point of sale and import to fulfill the labeling requirement.

Another alternative could be to allow the information to be accessed by an on-product QR code instead of a traditional label. In order to fulfill the labeling requirement, the QR code would need to direct the consumer to a website that readily shows the required information and meets the requirements of the on-product label. EPA believes that products using a QR code also include adjacent text to indicate the purpose of the QR code, stating that the QR code contains HFC information. A QR code may be useful for products where there is limited space for on-product labels or the accompanying packaging. A nonfunctional or unreadable QR code would not fulfill the labeling requirement and would be treated as a missing QR code. For products being sold through eCommerce, the QR code would not be sufficient on its own and the product description on the eCommerce site would also have to contain the required information. The QR codes would not be issued by EPA and are separate from the QR codes required under the Allocation Framework Rule at § 84.23. EPA requests comment on if QR codes should be allowed to fulfill the labeling

[168] European Union Law. 2014. Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 Text with EEA relevance. Available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.150.01.0195.01.ENG.*

[169] Labelling F-gas equipment you produce, import or install, UK Environment Agency, August 2019. Available at: *https://www.gov.uk/guidance/labelling-f-gas-equipment-you-produce-import-or-install.*

requirement for all products, only products where traditional labels are not practicable, or not at all and what benefits or challenges allowing QR codes may pose. EPA also requests comment on alternative methods that may be used to mark or otherwise label the product itself that would be sufficient to convey the required information (for example, color coding to identify the use of a regulated substance or date codes to identify date of manufacture).

EPA is proposing that as of the applicable compliance date, no person may sell or distribute, offer for sale or distribution, make available to sell or distribute, or import in the sectors and subsectors of the proposed rule a regulated product that contains, was manufactured with, or is intended for use with HFCs that lacks a label consistent with the requirements of this section. EPA proposes that regulated products lacking a label are presumed to use a regulated substance or a blend containing a regulated substance with a global warming potential equal to or greater than the limit proposed in this rule.

EPA is requesting comment on whether there should be a standardized process to correct missing or inaccurate labels on products, and if so, what that should be. A potential option EPA is considering would be to allow any entity within the distribution chain to label or re-label a product within their possession if they find it to be missing a label or mislabeled. EPA is also seeking comment on whether entities seeking to correct a labeling error should be required to report the initial labeling violation to the Agency. A corrected label would need to comply with all relevant labeling requirements. Further, EPA would anticipate that the entity doing the relabeling would conduct due diligence to ensure that the new label is accurate and meets the proposed labeling requirements in this rule. Allowing relabeling could reduce the number of products that may be discarded due to missing or incorrect labels, as they would not need to be returned to the importer or manufacturer. However, it may not be a cost that a distributor of a product is willing to bear, given the responsibility to correctly label products is with the manufacturer or importer.

The proposed labeling provisions are intended to support compliance with the prohibitions on the use of high-GWP HFCs in certain sectors and subsectors. Requiring a manufacturer or importer to affirmatively and publicly state through the label that the HFC being used and its GWP reinforces their compliance with the limits to be established through this rulemaking. Accurate labeling information would also support compliance with the limits by allowing distributers, as well as competitors and the general public, to assess whether a product uses a compliant HFC. The proposed labeling and packaging requirements may also ease inspection by EPA and U.S. Customs and Border Protection (CBP) as appropriate, and facilitate efforts to prevent the import or manufacture of noncompliant products. Clearly and visibly identifying the HFC or blend containing an HFC used in the product would provide one mechanism for inspectors to quickly identify noncompliant products and/or identify products for further inspection.

As a secondary consideration, the information on the labels and packaging materials could provide consumers with information about whether a product uses an HFC or blend containing an HFC and its GWP. This information may alter consumer purchasing choices and could increase market pressure for the transition away from products that use HFCs.

EPA recognizes that in this rulemaking the proposed definition of ''products'' includes components. EPA is considering how to best address components that are intended for use with HFCs but do not contain a regulated substance when shipped—*i.e.,* is not a regulated product when shipped—and whether instead of requiring each individual component be labeled, the Agency should allow labeling of a subset of the components of a single system to fulfill the requirement once the full and proper amount of HFC or blend containing an HFC is added. For example, for a supermarket refrigeration system, EPA requests comment on whether each individual case within the same subsector and using the same regulated substance in that system should be labeled or if labeling a subset of the cases and/or other components of the system in accordance with the proposed requirements would be sufficient. EPA seeks comment on the benefits and challenges of allowing labeling a subset of components to fulfill the requirement, along with specific sectors or subsectors where this option should be considered. EPA also seeks comment on how it can provide clarity on which components are covered and which are not.

EPA seeks to design this proposal in a way that would minimize compliance burden on the regulated community while maintaining the necessary components for identifying and deterring noncompliance. First, EPA recognizes that there may be products for which on-product labels are not practicable and is requesting comment on alternative labeling methods EPA should consider that would provide similar enforceability. For products that are identified with a valid rationale for why on-products labels cannot be used, EPA is considering whether to allow the required information to be included in packaging materials or available through an on-product QR code.

Second, existing labels that meet the proposed requirements and include the required information would be sufficient. EPA recognizes that certain information is already provided on products through existing UL labels, nameplates, or other labels on the product or packaging with the product at the time of import and sale. For instance, a nameplate or certification sticker on a pre-charged air conditioner might already contain the date of manufacture, the refrigerant, and the charge size, and could be modified by including the GWP of the refrigerant. Likewise, the label on a household refrigerator-freezer could be modified to include the additional information needed for the refrigerant and also the information regarding the foam insulation. EPA requests comment on the proposal to allow existing labels that contain required information to satisfy the labeling requirements or if EPA should instead consider requiring a separate standardized label containing all the required information.

EPA recognizes that products exist within the sectors and subsectors covered by this proposed rule that do not contain or use any regulated substance. EPA is considering developing a standardized voluntary label for these products that would clearly state that the product does not use HFCs. This voluntary label could assist compliance with the proposed prohibitions by indicating that the product does not use an HFC or blend containing an HFC. This would eliminate the ambiguity associated with an unlabeled product in a controlled sector or subsector (*i.e.,* the product does not use an HFC and does not need to be labeled; or the product uses an HFC and is mislabeled). This voluntary label would also provide consumers with additional information regarding HFCs and allow them to more easily differentiate between products based on whether they use HFCs. Similar voluntary labeling continues to be included on aerosol products to indicate they do not use CFCs despite a prohibition on such use since 1994. (See 82.64(c)). EPA requests comment on the value of a voluntary label that

affirmatively states that the product does not use HFCs and any benefits or challenges that such a label may pose.

EPA is considering whether to establish an administrative process to address products that have been found to be mislabeled or lacking a proper label. In the Allocation Framework Rule, EPA included a system of administrative consequences as one method to deter illegal production or import of HFCs. Under that program, EPA may adjust an entity's production or consumption allowances by retiring, revoking, or withholding them depending on the circumstances. EPA provides notice to a company of an impending administrative consequence, and then the company has an opportunity to respond prior to the Agency taking any final action. The administrative consequences do not supplant or replace any enforcement action that may be available for violations of EPA's regulations or the AIM Act. Instead, such consequences are in addition to any applicable enforcement action.

EPA's intent in the proposed rule for establishing labeling provisions is to support the enforcement of prohibitions on the use of certain HFCs and blends containing HFCs that exceed the proposed GWP limits or are otherwise prohibited. Not providing a label or mislabeling a product hampers EPA's ability to enforce those prohibitions. The administrative process considered here would have the purpose of quickly correcting mislabeled or unlabeled products. EPA is considering the option of creating a website that would provide a list of entities that manufacture, import, export, sell, distribute, or offer for sale or distribution products that have been found to be mislabeled or lacking a proper label. Transparency is a significant means of ensuring compliance, as discussed in detail in the Allocation Framework Rule (see 86 FR 55191, October 5, 2021). In this scenario, EPA would employ similar processes for notification and response finalized in 40 CFR subpart A. This would include notifying the entity of the Agency's finding that a regulated product or products is mislabeled or lacking a label, and of our intent to list them as not meeting the subsection (i) labeling provisions. The Agency would provide thirty days from the initial notification for the entity to respond, after which the entity would be publicly listed on the EPA's website. The entity could be listed on the EPA website for a minimum set time frame, such as a year. To be removed from the website, EPA is considering whether the entity would be required to submit a demonstration that the labeling issue has been resolved along with measures that the entity has put in place to reduce the likelihood of future labeling problems.

EPA requests comment on whether an administrative process as described above would support compliance with these provisions. Also, the Agency is interested in whether there are additional or alternative actions that the Agency could consider to aid compliance with the subsection (i) labeling provisions, including whether entities that are listed on EPA's website as lacking proper labels could be fully restricted from using (*e.g.,* manufacture, import, sale, export, offer for sale or distribution) any regulated substance for a set period of time. Additionally, if the listed entity receives production or consumption allowances, the Agency requests comment on whether EPA could use its authority under subsection (e) to revoke or reduce the entity's next allocation as a consequence for mislabeling products under subsection (i).

B. What potential auditing and third-party testing programs is EPA seeking advance information on?

EPA is asking for advance information on a variety of options for third-party testing and auditing that it is considering pursuing in a future rulemaking to strengthen compliance with requirements that may be established in this rulemaking and potential future rulemakings under subsection (i). Such auditing and third-party testing programs would facilitate the verification that products and equipment imported, manufactured, sold, or distributed within the United States contain allowable HFCs. Audits would also serve the important function of testing to ensure that products and equipment use allowable HFCs and that labels identifying the HFCs are accurate. Audits would assist with finding illegal products and removing them from the United States market and help deter noncompliance, incentivize future compliance, and ensure that companies that are complying with statutory and regulatory obligations are not put at a competitive disadvantage. EPA is considering a multifaceted approach for auditing and is soliciting advance information on the aspects of auditing programs discussed in the following sections, including the merits of the options discussed.

Numerous economic studies have found that third-party auditing improves company and individual compliance with the law.[170] [171] [172] EPA has used third-party auditing to improve regulatory compliance in rules, including the Renewable Fuel Standard program.[173] As noted in a Renewable Fuel Standard rulemaking, there is expert consensus that well-implemented third-party auditing is a good use of limited enforcement and oversight resources.[174] Independent and objective audits are a valuable tool to improve compliance among all companies, not just those with covert malicious intent to be inaccurate or unfair in their auditing or reporting. EPA is seeking advance information on the advantages and disadvantages of developing an auditing program to ensure compliance and input on how to structure such a program. EPA does not intend to finalize an auditing program as part of this proposed rule but seeks to gather information that the Agency believes will be useful to inform a potential future proposal. Accordingly, EPA does not intend to respond to any advance information received on the options discussed in this section in any final rulemaking for this proposal.

1. Who should be subject to the independent third-party testing and audits?

EPA is seeking advance information on the framework for a third-party testing program and is considering several different options for this framework. The first option would be to require manufacturers of regulated products to receive a third-party certification that the products are compliant with this proposed rule. Under this option, any manufacturer or importer of regulated products would be required to show that the product is certified compliant with subsection (i) use restrictions before that product could be imported, offered for sale, sold, or otherwise distributed. It would be prohibited to import into the United

[170] Esther Duflo, Michael Greenstone, Rohini Pande, and Nicholas Ryan, ''Truth-Telling by Third-Party Auditors and the Response of Polluting Firms: Experimental Evidence from India,'' *Journal of Economics* (2013), 1499–1545. *doi:10.1093/qje/qjt024.*

[171] Henrik Kleven, Martin Knudsen, Claus Kreiner, Søren Pedersen, and Emmanuel Saez, ''Unwilling or Unable to Cheat? Evidence From a Tax Audit Experiment in Denmark.'' *Econometrica,* 79: 651–692. (2011) *https://doi.org/10.3982/ECTA9113.*

[172] Marcelo Bérgolo, Rodrigo Ceni, Guillermo Cruces, Matias Giaccobasso, and Ricardo Perez-Truglia, ''Tax Audits as Scarecrows: Evidence from a Large-Scale Field Experiment,'' NBER Working Paper No. 23631 July 2017, Revised January 2020 JEL No. C93, H26, K42.

[173] More information on the Renewable Fuel Standard program available at: *https://www.epa.gov/renewable-fuel-standard-program.*

[174] 79 FR 42080, July 18, 2014.

States or domestically manufacture any uncertified regulated product. The certification process would include registering the manufacturer or importer into a third-party certification system that would have the authority to test and verify products and report their findings directly to EPA. Accordingly, EPA anticipates that this option could involve use of foreign third-party certifiers.

An alternative to product certification for regulated products would be to require a representative sample of all domestically manufactured and imported regulated products to be tested for compliance by a third-party at the point of manufacture (in the case of domestically manufactured products), or on import (*i.e.,* at the ports in the case of importers). For imported products, EPA could consider options that would allow for samples to be provided prior to arrival in the U.S. or be tested following release. Another option EPA is considering would require that all retailers that sell, offer for sale, distribute, or make available for sale or distribution regulated products to register and participate in a third-party auditing program. Under this structure, third-party auditors would select a certain number of products to test for compliance per year and report the results to EPA.

EPA is seeking specific comment on the relative strengths and weaknesses of these approaches to testing and auditing, and whether they are optimally used singly or in combination. To facilitate such comment, EPA notes that it believes a strength of the manufacturer and importer-focused third-party certification for all products that may contain HFCs is that it would reduce the likelihood that noncompliant products will be manufactured or imported because it would signal the need for compliance with subsection (i) restrictions early in the market chain. We have particular concern about noncompliant imports into the United States by retailers and through online eCommerce and establishing auditing that would occur at the point of import may minimize noncompliance. It would also reduce the burden on retailers to identify whether they sell products that may contain HFCs and thus need to register with the third-party certification program. This would be especially beneficial for small businesses that may be less familiar with environmental regulations and less familiar with what types of products may contain HFCs.

Potential weaknesses of the third-party certification system include difficulty in identifying which products would need to be certified in order to be sold or distributed in the United States and the degree to which EPA or an accreditation board would be able to provide adequate oversight to foreign third-party certifiers. Additionally, given that all products would need to be certified compliant prior to import, EPA is concerned that accrediting enough certifiers to conduct the required testing would be challenging. A related challenge may concern how auditing results are shared with the Agency including the format in which they are presented. EPA is seeking input on ways to mitigate these potential challenges.

Alternatively, a potential strength of a retailer-focused third-party auditing program is that products will consistently be tested for compliance by various third-party auditors. This could provide a continuous stream of data to understand how many tested products are compliant and assist EPA in knowing which products to focus on for enforcement. A potential weakness is that more noncompliant products may be made available in the U.S. market, especially from foreign distributors through eCommerce. Furthermore, it may be challenging to assess compliance of products sold by foreign businesses through online eCommerce as these entities would not be participants of the auditing program. In order to reduce potential rates of noncompliance, EPA is seeking input on the frequency with which third-party audits should be conducted and methods of addressing potential noncompliance by foreign eCommerce businesses.

In addition to either of these proposed structures, EPA is also considering an auditing program for non-residential equipment that is field charged with regulated substances. Two options EPA is considering include either a periodic audit of the owners of the existing equipment to review whether this field-charged equipment is being charged with a compliant substance or to audit the field chargers when equipment is charged to determine that it is being charged with a compliant substance. EPA is seeking comment on the relative strengths or weaknesses of either approach and whether the field chargers or equipment owners should maintain sufficient documentation to support such an audit. EPA believes a potential strength of auditing the owners of the non-residential field-charged equipment is that it will narrow the universe of audited parties to only those owners of the equipment that is being periodically field-charged with regulated substances and could encourage this industry to provide its own oversight of field charging entities to ensure that its equipment is compliant.

In addition to seeking input on the relative strengths and weaknesses of these two possible structures for a third-party testing and auditing program, EPA is also seeking advance information on any other structures that could be effective in ensuring noncompliant products are unavailable in the U.S. market. As discussed in the Lesley K. McAllister law review article, *Third Party Programs to Assess Regulatory Compliance,*[175] one of the metrics of success for such a program is the rate of compliance that the program enhances.[176] Common drivers of the rate of compliance includes the frequency with which testing is carried out and the regularity that testing will be conducted on a given regulated entity.[177] For example, even if testing will only be conducted on a regulated entity once every few years, if the entity knows to anticipate testing with regularity, the entity is more likely to change its processes to be compliant. EPA is especially interested in any comments that address how the third-party program can be structured to enhance rates of compliance.

2. What elements and criteria should be included in the third-party auditors and/or accreditation body requirements?

EPA is seeking advance information on how the accreditation process should be structured for third-party auditors or certifiers and what criteria should be included in the accreditation process. First, EPA is seeking input on how accreditation of third-party auditors or certifiers should be structured. The above-cited McAllister law review article notes that different agencies have structured third-party programs in a variety of ways. That article notes that the most common structure is for the government agency to recognize a third-party accreditation body that in turn accredits conformity assessment bodies, *i.e.,* third-party auditors or certifiers.[178] However, the article recognizes that this structure varies under different regulatory programs, noting that in some instances the regulatory agency may accredit the third-party auditors or certifiers directly, and that other programs accredit a combination of third-party auditors and testing bodies (*e.g.,* laboratories).[179]

EPA is seeking feedback on how the accreditation system could be structured

[175] 53 B.C. L. Rev. 1 (Jan. 2012).

[176] *Id.* at 44–45.

[177] *Id.* at 44–45.

[178] *Id.* at 7.

[179] *Id.*

for third-party auditors or certifiers, and whether that accreditation system should be headed by accreditation bodies recognized by EPA. EPA is seeking input on the relative strengths and weaknesses of recognizing accreditation bodies to conduct the accreditation process of third-party auditors or certifiers and the strengths and weaknesses of EPA directly accrediting third-party auditors or certifiers.

If a comment recommends that EPA recognize accreditation bodies to accredit third-party auditors or certifiers, EPA is also interested in input on what criteria should be used to assess EPA's recognition of these bodies. Such criteria could include, for example: how the accreditation body must demonstrate legal authority (*e.g.,* governmental or contractual) to perform assessment of third-party auditors necessary to assess the applicant's capability to conduct audits; criteria for competency and capacity to adequately assess applicants' capabilities as an auditor; criteria to reduce conflicts of interest and promote independence in the assessment body; and what recordkeeping requirements should exist to qualify for accreditation.

EPA is also seeking input on what criteria should be used, either by EPA or by the accreditation body, to accredit third-party auditors. Such criteria could include, for example: laboratory testing capabilities the applicant must have, and requirements to ensure the capabilities are adequate for testing for compliant HFCs; expertise the applicant must have in order to adequately assess compliance beyond testing capabilities; recordkeeping requirements that should be required; criteria to reduce conflicts of interest and promote independence in the third-party auditor; frequency that the applicant should be re-assessed for accreditation; and how the reports should be provided to EPA and/or the accreditation body.

Of particular interest to EPA is advance information on how the third-party auditing program should be paid for. EPA is considering implementing a fee-based system paid by all registered entities that distribute products that may contain HFCs in the U.S. market. If using a fee-based structure, EPA is seeking input on whether to provide a fee-structure that is proportionate to the size of business in order to mitigate impacts on small businesses. Although EPA is considering a fee-based approach, EPA also welcomes comments on alternative payment structures that could foster the greatest level of independence between registered regulated entities and the third-party accreditation body and/or third-party auditors.

The above-cited McAllister law review article notes that one of the metrics of success for third-party auditing programs is the extent to which the program produces reliable results. Primarily this metric is driven by the extent to which the program requirements foster third-party auditors' competency and independence.[180] In order to foster competency, EPA believes the testing capabilities to determine that any HFCs in a product are compliant will be paramount. EPA is especially interested in any comments regarding recommended requirements to ensure that third-party auditors are capable of this type of testing and any additional requirements that should be added to enhance the likelihood that third-party auditors will be competent to assess products' compliance.

Likewise, EPA is interested in advance information on enhancing the independence of third-party auditors. EPA believes a fee-based system will foster independence in auditors as they would not be paid directly by the entity being audited. However, EPA is interested in comments on additional criteria that would foster independence. Such criteria could include a required amount of time that the auditor would not work for the audited entity both before and after the audit. EPA believes such criteria could help reduce commercial and financial pressures on the auditor that could potentially compromise the audit.

Another metric of success discussed in the McAllister article is the agency's capacity to administer the third-party program.[181] Depending on how the third-party program is designed, implementing the program may require a large investment of agency time and resources. In particular, if EPA is directly accrediting third-party auditors rather than delegating that to accreditation bodies, EPA will need enough resources to adequately assess each of the third-party auditor applicants. It would also require EPA personnel to develop the necessary expertise to consistently evaluate capabilities of applicants. EPA directly accrediting third-party auditors could present additional challenges when assessing potential foreign third-party auditor applicants.

[180] *Id.* at 40.

[181] *Id.* at 45–48.

IX. What are the proposed recordkeeping and reporting requirements?

EPA is proposing recordkeeping and reporting requirements for any entity that domestically manufactures or imports products that use or are intended to use regulated substances or blends containing a regulated substance and is subject to the restrictions in this proposed rulemaking.

A subset of the entities that would be subject to these proposed reporting requirements is currently subject to reporting requirements under subpart QQ of the GHGRP.[182] The GHGRP, 40 CFR part 98, covers the mandatory reporting of greenhouse gas emissions and supplies from certain facilities and suppliers. To decrease the administrative burden, particularly to those entities that would be subject to both subpart QQ of 40 CFR part 98 and this proposed rulemaking, EPA is proposing reporting requirements similar to the data elements required by the GHGRP. The data elements in subpart QQ of the GHGRP form the starting point for the proposed recordkeeping and reporting requirements further outlined in this section.[183] EPA is taking this proposed approach because many of the data elements in subpart QQ provide information necessary for EPA to assess compliance with this proposed rule.

While some of the proposed requirements overlap with those of the GHGRP, this proposal would require all manufacturers and importers of products that use or are intended to use regulated substances or blends containing a regulated substance subject to these proposed restrictions to electronically report certain information to EPA. This is in contrast to the GHGRP where reporting is not required for entities that import and export less than the equivalent of 25,000 $MTCO_2e$ per year and are not otherwise required to report under 40 CFR part 98. Under subpart QQ, entities that import or export an annual quantity of fluorinated greenhouse gases (as defined in 40 CFR part 98) contained in pre-charged equipment or closed-cell foams that is equivalent to 25,000 metric tons CO_2e [184] or more are required to provide annual reports detailing certain

[182] 40 CFR part 98, subpart QQ, ''*Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams.*''

[183] EPA is not proposing any changes to 40 CFR part 98 in this rulemaking.

[184] Calculated as specified in 40 CFR 98.2.

information regarding their imports or exports of such products.

Instead, for this rule EPA is proposing to apply the provisions to all entities that domestically manufacture or import products that use or are intended to use regulated substances or blends containing a regulated substance subject to this proposed rulemaking regardless of the amount of regulated substances in those products. EPA believes requiring these entities to report will be important for understanding how HFCs are being used or are intended for use in products and would provide important information for verifying compliance and allowing for oversight.

EPA is proposing that reports be submitted electronically using EPA's Central Data Exchange (CDX)[185] through EPA's electronic Greenhouse Gas Reporting Tool (e-GGRT).[186] EPA intends to avoid duplicative burden between the AIM Act and the GHGRP and reporting through e-GGRT will aid in the synchronization of these systems. Entities already subject to reporting under 40 CFR part 98, subpart QQ may need to augment their reporting in order to comply with reporting requirements under this proposal but would not need to duplicate their efforts. Where there is overlap in requested data, EPA intends to provide the ability to populate a draft annual GHGRP report with data submitted under the AIM Act, which the GHGRP reporter could then revise or augment as necessary, certify, and submit as required under 40 CFR part 98. EPA seeks comment on additional ways the Agency can utilize existing data collection to ensure compliance with the proposed restrictions.

A. What reporting is EPA proposing to require?

EPA is proposing that covered entities provide reports to EPA that include: (1) the sector and subsector of the product based on the categorization in this rulemaking; (2) for each type of pre-charged equipment with a unique combination of charge size and regulated substance or blend containing a regulated substance, the identity of the HFC or HFC blend used and its GWP, charge size (including holding charge, if applicable), and number of each product type domestically manufactured or imported; (3) for each element in (2) in this list, the total mass in metric tons of each HFC or blend containing an HFC used in the product type, and the mass of the regulated substance or blend containing a regulated substance per unit of equipment type; and (4) the dates on which the products were imported or domestically manufactured.

For the proposed requirement to report the total mass in metric tons of each HFC or blend containing an HFC used in the regulated products, including those in the RACHP and aerosols sectors, but excluding those in the foam blowing sector, reporters shall use the following equation:

$$I = \Sigma_t S_t * N_t * 0.001$$

where:

I = Total mass of the regulated substance or blend containing a regulated substance (metric tons) in all regulated products the reporter imports and/or domestically manufacturers quarterly.

t = Equipment/product type using a regulated substance or blend containing a regulated substance.

S_t = Mass of the regulated substance or blend containing a regulated substance per unit of equipment type t (charge per piece of equipment, kg).

N_t = Number of units of equipment type t imported or domestically manufactured quarterly (pieces of equipment).

0.001 = Factor converting kg to metric tons.

For the foam blowing sector, for those foams that are an integrated part of a product (*e.g.,* the foam in a household refrigerator or freezer), S_t shall be the mass of the regulated substance or blend containing a regulated substance in the foam used as part of the product), and all other factors in the equation above shall remain the same.

For the foam blowing sector, for those foams that are considered the product itself (*e.g.,* extruded polystyrene boardstock), S_t shall be the density of the regulated substance or blend containing a regulated substance in foam (charge per cubic foot of foam, kg of regulated substance per cubic foot), N_t shall be the total volume of foam imported or domestically manufactured quarterly (cubic feet of foam), and all other factors in the equation above shall remain the same.

This equation is used in 40 CFR part 98 subpart QQ for imports and exports of pre-charged equipment and closed-cell foams that contain a fluorinated GHG, as defined under 40 CFR part 98, and is already in use and familiar to those currently subject to reporting under subpart QQ.

EPA is requesting comment on the proposed reporting requirements and whether specific data should additionally be required for other sectors or subsectors such as: a list of each specific product model using regulated substances that falls within each type and unique combination of charge size and regulated substance or blend containing a regulated substance as reported per above; a differentiation by model number of the products as reported per above; an estimation of future imports over some period of time such as the next quarter or next year; information on the source of the HFC or HFC blend such as company name and address; or other information that would prove useful for the purposes of this proposed regulation.

For equipment that is shipped without an HFC but is intended to use an HFC (*e.g.,* field-charged equipment), EPA is proposing that the manufacturer or importer of the dry shipped equipment report on the number of products, the HFC or HFC blend the products are intended for use with, and the expected quantity of HFC or HFC blend that the product would contain when fully charged. EPA requests comment on requiring additional data elements such as whether the product is also intended for use with substances other than HFCs or HFC blends, the sector(s) and subsector(s) the product is used in, and whether the product is a component or subassembly. The Agency also requests comment on other data points that may be useful in determining the number of HFC products that are manufactured or imported without a charge. Alternatively, EPA could require entities who manufacture or import products that are designed for but do not contain an HFC or HFC blend to affirm they are a covered entity on an annual basis and list the types of products they manufacture or import, the quantity they manufactured or imported last year, and the regulated substances their equipment is designed to work with.

EPA notes that the definition of manufacture for this proposed rule includes the entity responsible for charging a field charged product. EPA proposes for the reporting and recordkeeping section, technicians are not included as manufacturers and would therefore not be subject to the proposed reporting and recordkeeping requirements.

Requiring reporting from entities that are manufacturing products that are intended for but do not contain HFCs and HFC blends would ensure EPA knows the full universe of relevant products that likely will contain HFCs or HFC blends in the covered sectors and subsectors and know the full universe of entities that manufacture and import these products. These proposed data requirements would provide information regarding the quantity and type of HFCs used in the

[185] Central Data Exchange is EPA's electronic reporting site (*https://cdx.epa.gov/*).

[186] E–GGRT is EPA's electronic Greenhouse Gas Reporting Tool for certain sources and suppliers of GHGs in the United States to report GHG emissions (*https://ghgreporting.epa.gov/ghg/login.do*).

three sectors (*i.e.,* RACHP, foam blowing, and aerosols) covered in this proposed rulemaking. This information will support EPA's efforts to assess the compliance of the regulated industries and will assist with efforts to enforce requirements established in this rulemaking. EPA is proposing that importers and manufacturers of products using regulated substances or blends containing a regulated substance who fail to report required information or provide inaccurate information would be considered a violation. EPA does not believe that reporting the information listed in this section above will be overly burdensome for the regulated community. Much of the information is already required for a portion of those impacted by this proposed rulemaking. The required data is limited to the information needed to ensure compliance and monitor the import and manufacture of the use of HFCs in products.

EPA seeks to ensure a level playing field for the regulated community and views regular reporting as a central mechanism for ensuring compliant companies are not placed at a competitive disadvantage. EPA requests comment on the proposed reporting requirements, including comments related to whether additional data should be collected or if complying with the proposed requirements will be overly burdensome.

EPA is proposing that reports described in this section be submitted to EPA within 45 days of the end of the applicable reporting period, unless otherwise specified. The report would need to be signed and attested by a responsible officer. EPA is proposing that importers and domestic manufacturers of products subject to the proposed reporting requirements provide a statement of certification that the data they provide is accurate. EPA is also proposing that reporters be required to certify that their products use only allowed HFCs, do not exceed any applicable GWP limit, and are properly labeled. EPA requests comment on the proposed certification requirements.

What is the proposed frequency of reporting?

EPA is proposing to require quarterly reporting from domestic manufacturers and importers subject to the proposed reporting requirement. The proposed frequency would allow for the Agency to review data throughout the year, identify trends, and identify noncompliance with the GWP limits and inaccurate reporting on an ongoing basis. Quarterly reporting is consistent with other reporting under the Allocation Framework Rule. Quarterly reporting may allow the Agency to more quickly identify trends and enforce against any production or import of a regulated product that uses or is intended to use a regulated substance or blend containing a regulated substance that is above the GWP limit or otherwise restricted as proposed in this rule. Doing so may limit the amount of such noncompliant product that enters commerce compared to an annual report. This frequency of reporting may likewise provide manufacturers and importers the ability to more quickly stop production or import of such noncompliant product and return to compliance with the provisions of this proposed rule. Quarterly reporting may also allow EPA to identify and correct inaccurate reporting more quickly so that the errors can be corrected. Quarterly reporting would also provide more information for understanding where HFCs and blends containing HFCs continue to be used in the sectors and subsectors covered by this rule, which would allow the Agency to understand market dynamics and the transitions that are occurring in those sectors and subsectors more quickly than semi-annual or annual reporting. The reports could also inform potential future rulemakings under subsection (i) of the AIM Act or potentially under other subsections of the Act. In light of these considerations, EPA is proposing the collection of quarterly reporting as the most appropriate frequency. EPA is taking comment on whether semi-annual, annual reporting, or another reporting frequency would adequately provide the same level of information and enforcement potential.

EPA is also taking comment on whether it would be appropriate to require notification to EPA prior to importing products that use or are intended to use HFCs. This would be analogous to the requirements at 40 CFR 84.31(c)(7) that require importers of bulk HFCs to report to EPA what they are importing early enough that EPA and CBP can determine if there are sufficient allowances for the imported HFCs or blends containing HFCs. In this case the notice would certify to EPA that the products using HFCs are in compliance with these standards and would provide the data required in the quarterly reporting program described in this section above for the products in the shipment. This information could be used to assist CBP as well as EPA personnel that may need to assess if a given product is consistent with requirements established in this rulemaking. While EPA notes that providing information regarding regulated products prior to their import may have compliance related advantages, such as enabling noncompliant products to be stopped before entering the market, such a system would require significant EPA resources to administer. EPA seeks comments on potential advantages or disadvantages of importers reporting prior to import in addition to quarterly, semi-annual, or annual reporting, including whether reporting prior to import would be useful for assessing compliance.

B. What recordkeeping is EPA proposing?

EPA is proposing that entities that import or domestically manufacture regulated products in the sectors and subsectors covered by this rule maintain records that form the basis of the reports outlined in section IX.A of this preamble above for a minimum of three years and make them available to EPA upon request. EPA also proposes that the importer or domestic manufacturer retain records of the company or retailer to whom the regulated product was sold, distributed, or in any way conveyed to. Information regarding where products have been distributed, sold, or conveyed to after import or manufacture may be necessary for tracking noncompliant products when they are identified and removing them from the market.

In addition, EPA is proposing that importers retain the following records substantiating each of the imports that they report: (1) a copy of the bill of lading for the import, (2) the invoice for the import, (3) the CBP entry documentation if applicable, (4) ports of arrival and entry though which the products passed, and (5) country of origin and if different the country of shipment to the United States. These requirements are consistent with the recordkeeping already required for the subset of importers subject to subpart QQ of the GHGRP and will allow EPA to enforce the proposed restrictions by tracking the movement and sources of noncompliant products when they are identified.

EPA requests comment on the proposed recordkeeping requirements and whether additional recordkeeping should be required. EPA also requests comment on whether the Agency should consider a retention period for records of five years in alignment with the HFC Framework rule.

X. What are the costs and benefits of this proposed action?

EPA estimated the costs and benefits of restricting HFCs consistent with this proposal. This analysis, presented in the RIA addendum contained in the docket, is intended to provide the public with information on the relevant costs and benefits of this action, if finalized as proposed, and to comply with executive orders. To the extent that EPA has relied upon costs and benefits estimates for purposes of analyzing factors under subsection (i)(4), as discussed in sections VII.E and VII.F of this preamble, EPA has summarized those estimates in the *Costs and Environmental Impacts* TSD.

In the RIA addendum, EPA also included estimates of the social cost of HFCs in order to quantify climate benefits, chiefly for the purpose of providing useful information to the public and to comply with E.O. 12866. Although EPA is using the social costs of HFCs for purposes of that assessment, this proposed action does not rely on the estimates of these costs as a record basis for the agency action, and EPA would reach the proposed conclusions even in the absence of the social costs of HFCs.

A. Assessment of Costs and Additional Benefits Utilizing Transition Options

The RIA addendum conducted for this proposed rule follows a methodology that is consistent with the costs and benefits analysis detailed in the Allocation Framework RIA, released in 2021, as well as the Addendum to that RIA accompanying the proposed 2024 Allocation Rule. In the Allocation Framework RIA and that Addendum, costs and benefits are calculated for the entire compliance period of the HFC phasedown (2022–2036), using a marginal abatement cost (MAC) curve to evaluate the availability and cost of abatement required to meet the AIM Act phasedown caps for production and consumption. Similarly, for this proposed rule, EPA quantifies the costs associated with the transitions necessary for compliance, but does so based on the sector- and subsector-specific restrictions proposed by this rule as opposed to an overall production and consumption cap. Both approaches, as discussed in the respective RIAs, also quantify the monetized climate benefits associated with the reduction in emissions over time as a result of decreased consumption of regulated substances.[187]

Because the phasedown in HFC consumption and production has already been codified under the Allocation Framework Rule, with further changes proposed under the 2024 Allocation Rule, the full extent of the reductions that would result from this proposed rule are not considered additional. Therefore, in calculating the impacts from this proposed rule, we calculate the ''incremental'' costs and environmental impacts (either increased or decreased) that this proposed rule would achieve compared to what the Allocation Framework Rule as updated by the proposed 2024 Allocation Rule achieves. This difference is considered the additional costs and environmental impacts realized by this proposed rule, should it be finalized as proposed.

EPA estimates that the proposed rule would have incremental benefits relative to those assessed for the Allocation Rules, although—as discussed in the RIA addendum and the *Costs and Environmental Impacts* TSD—the extent of these benefits varies depending on the mix and timing of industry transitions made in order to achieve compliance in affected subsectors. In its analysis of the Allocation Rules, EPA estimated that regulated entities would adopt specific technology transition options to achieve compliance with the statutory allowance cap step-downs. Industry is already making many of these transitions, and we expect that achieving the allowance cap step-downs will require many of the same subsector-specific technology transitions that would also be required by this proposed rule. However, the rule may in some cases require regulated entities to further accelerate transitions in specific subsectors, relative to what EPA previously assumed in its analysis of the Allocation Rules. Conversely, entities in a discrete set of subsectors not covered by this proposed rule could conceivably forgo or delay adopting abatement options that were assumed to be undertaken to comply with the Allocation Rules.

Given this uncertainty, EPA analyzed two scenarios to represent the range of potential incremental impacts resulting from the proposed rule: a ''base case'' and ''high additionality case.'' Under the proposed rule, EPA estimates that HFC emissions and consumption from 2025–2050 would be further reduced by an annual average of approximately 5 to 35 $MMTCO_2e$ and 28 to 43 $MMTCO_2e$, respectively. The annual incremental consumption and emissions avoided are shown in Table 6 for select years as well as on a cumulative basis.

TABLE 6—INCREMENTAL CONSUMPTION AND EMISSION REDUCTIONS FROM THE PROPOSED RULE, 2025–2050

[$MMTCO_2e$]

Year	Consumption reductions		Emission reductions	
	Base case	High additionality case	Base case	High additionality case
2025	9	42	−52	8
2030	26	51	−12	35
2035	41	51	6	45
2040	21	29	27	40
2045	35	44	27	37
2050	37	46	30	38
Total (cumulative)	735	1121	134	903

[187] For the sake of comparison, results from both sets of analyses are included in the RIA addendum contained in the docket.

In order to calculate the climate benefits associated with consumption abatement, the consumption changes were expressed in terms of emissions reductions. Emissions avoided in each year can also be less than the consumption avoided in the same year because of the delay between when an HFC is produced or imported and when it is emitted to the atmosphere.

As noted above, the base case scenario of incremental benefits shows that this proposed rule would achieve overall emission reductions over the full time horizon for implementation. However, the incremental emissions reductions under the transition pathway evaluated for the proposed rule are in some cases assumed to be more gradual than those EPA previously estimated to occur with implementation of the Allocation Rules. This is primarily because a) the base case does not include certain actions to reduce consumption (and, consequently, reduce emissions) previously assumed in the Allocation Rule reference case, including increased leak reduction and enhanced recovery of HFCs, and b) the assumed timing of emission reductions achieved or forgone differs depending on assumed equipment lifetime and the subsector and technology being modeled. Overall, the abatement options analyzed for compliance with this proposed rule result in more consumption reductions on a cumulative basis; however, some of the consequent emission reductions in this proposal would come at a later time than the emission reductions from the Allocation Rule reference case. As a result, when compared to the analysis of the Allocation Rules, the base case scenario results in slightly higher emissions in earlier model years while yielding greater emission reductions in later years and overall.

Although the base case scenario is a reasonable projection of the potential impacts of this proposed rule, there is reason to believe that it is a conservative one, and that the incremental emission reduction benefits associated with this proposed rule could be substantially greater than reflected in the base case scenario. Previous regulatory programs to reduce chemical use in the affected industries show that regulated entities do not limit their response to the required compliance level; rather, regulated entities may take additional actions that transform industry practices for various reasons, including the anticipation of future restrictions, strengthening their competitive position, and supporting overall environmental goals. For this reason, in the high additionality case we assumed certain abatement options not covered by the proposed rule—but which were assumed in the prior accounting of benefits for the Allocation Rules—are also included to illustrate the potential for incremental benefits. In both scenarios, on a cumulative basis the rule is expected to yield incremental emission reductions, ranging from 134 to 903 $MMTCO_2e$ through 2050 (respectively, about 3 percent and 20 percent of the total emissions over that same time period in the Allocations Rules analyses). In the RIA addendum, we estimate the present value of these incremental benefits to be between $5 billion and $51 billion in 2020 dollars.

TABLE 7—SUMMARY OF ANNUAL INCREMENTAL CLIMATE BENEFITS, COSTS, AND NET BENEFITS OF THE TECHNOLOGY TRANSITIONS RULE BASE CASE AND HIGH ADDITIONALITY CASE SCENARIOS FOR THE 2025–2050 TIMEFRAME

[Millions of 2020$, discounted to 2022] [a b c d]

Base case	Year			High additionality case		
	Incremental climate benefits (3%)	Annual costs (negative values are savings)	Net benefits (3% benefits, 3% or 7% costs) [e]	Incremental climate benefits (3%)	Annual costs (negative values are savings)	Net benefits (3% benefits, 3% or 7% costs) [e]
2025	−$3,603	−$395	−$3,209	$546	$31	$515
2029	−1,043	50	−1,092	2,563	335	2,227
2034	141	−200	340	3,739	−77	3,816
2036	−404	−677	273	3,213	−635	3,848
2040	2,669	−848	3,516	3,928	−784	4,712
2045	2,946	−786	3,732	4,031	−717	4,748
2050	3,606	−817	4,422	4,677	−743	5,419

Discount rate	3%	3%	7%	3%	7%	3%	3%	7%	3%	7%
PV	$5,084	−$8,045	−$4,225	$13,130	$9,309	$51,145	−$5,140	−$2,190	$56,285	$53,335
EAV	311	−492	−438	803	748	3,126	−314	−227	3,440	3,353

[a] Benefits include only those related to climate. Climate benefits are based on changes in HFC emissions and are calculated using four different estimates of the SC–HFCs (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For purposes of this table, we show the effects associated with the model average at a 3 percent discount rate, but the Agency does not have a single central SC–HFC point estimate. We emphasize the importance and value of considering the benefits calculated using all four SC–HFC estimates. As discussed in Chapter 5 of the RIA addendum a consideration of climate effects calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts.

[b] Rows may not appear to add correctly due to rounding.

[c] The annualized present value of costs and benefits are calculated as if they occur over a 26-year period from 2025 to 2050.

[d] The costs presented in this table are annual estimates.

[e] The PV for the 7% net benefits column is found by taking the difference between the PV of climate benefits at 3% and the PV of costs discounted at 7%. Due to the intergenerational nature of climate impacts the social rate of return to capital, estimated to be 7 percent in OMB's Circular A–4, is not appropriate for use in calculating PV of climate benefits.

Climate benefits presented in Tables 7, 8, and 9 are based on changes (increases or reductions) in HFC emissions compared to the Allocation Framework Rule compliance case (*i.e.,* after consideration of the Allocation Framework Rule and proposed 2024 Allocation Rule) and are calculated using four different global estimates of the social cost of HFCs (SC–HFCs): the model average at 2.5 percent, 3 percent, and 5 percent discount rates and the 95th percentile at 3 percent discount rate. For the presentational purposes of Table 7, we show the incremental benefits associated with the average SC–HFCs at a 3 percent discount rate, but

the Agency does not have a single central SC–HFCs point estimate.

EPA estimates the climate benefits for this rule using a measure of the social cost of each HFC (collectively referred to as SC–HFCs) that is affected by the rule. The SC–HFCs is the monetary value of the net harm to society associated with a marginal increase in HFC emissions in a given year, or the benefit of avoiding that increase. In principle, SC–HFCs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. As with the estimates of the social cost of other GHGs, the SC–HFC estimates are found to increase over time within the models—*i.e.,* the societal harm from one metric ton emitted in 2030 is higher than the harm caused by one metric ton emitted in 2025—because future emissions produce larger incremental damages as physical and economic systems become more stressed in response to greater climatic change, and because gross domestic product (GDP) is growing over time and many damage categories are modeled as proportional to GDP. The SC–HFCs, therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–HFCs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect HFC emissions.

The gas specific SC–HFC estimates used in this analysis were developed using methodologies that are consistent with the methodology underlying estimates of the social cost of other GHGs (carbon dioxide [SC–CO_2], methane [SC–CH_4], and nitrous oxide [SC–N_2O]), collectively referred to as SC–GHG, presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) (IWG 2021). As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, the EPA agrees that the TSD represents the most appropriate methodology for estimating the social cost of greenhouse gases until revised estimates have been developed reflecting the latest, peer-reviewed science. Therefore, EPA views the SC–HFC estimates used in analysis to be appropriate for use in benefit-cost analysis until improved estimates of the social cost of other GHGs are developed.

As discussed in the February 2021 TSD, the IWG emphasized the importance and value of considering the benefits calculated using all four estimates (model average at 2.5, 3, and 5 percent discount rates, and 95th percentile at 3 percent discount rate). In addition, the TSD explained that a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, is also warranted when discounting intergenerational impacts. As a member of the IWG involved in the development of the February 2021 TSD, EPA agrees with this assessment for the purpose of estimating climate benefits from HFC reductions as well, and will continue to follow developments in the literature pertaining to this issue.

Table 8 presents the sum of incremental climate benefits across all HFCs reduced for the proposed Technology Transitions Rule for 2025, 2029, 2034, 2036, 2040, 2045, and 2050 in the base case scenario.

TABLE 8—INCREMENTAL CLIMATE BENEFITS FOR THE PROPOSED RULE FOR SELECT YEARS FROM 2025–2050 (BASE CASE SCENARIO) [a] [b]

[Billions of 2020$]

Year	Incremental climate benefits by discount rate and statistic			
	5% (average)	3% (average)	2.5% (average)	3% (95th percentile)
2025	−1.5	−3.6	−4.8	−9.5
2029	−0.5	−1.0	−1.4	−2.8
2034	0.1	0.1	0.2	0.4
2036	1.1	−0.4	−0.4	−1.2
2040	1.3	2.7	3.5	7.1
2045	1.3	2.9	3.8	7.8
2050	1.7	3.6	4.6	9.5

[a] Benefits include only those related to climate. See Table 6–3 in the RIA addendum for the full time series of climate benefits using the SC–HFC.

[b] Climate benefits are based on changes in HFC emissions and are calculated using four different estimates of the SC–HFCs (model average at 2.5 percent, 3 percent, and 5 percent discount rates; and 95th percentile at 3 percent discount rate). The IWG emphasized, and EPA agrees with, the importance and value of considering the benefits calculated using all four estimates. As discussed in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 (IWG 2021), a consideration of climate benefits calculated using discount rates below 3 percent, including 2 percent and lower, are also warranted when discounting intergenerational impacts.

EPA estimates that the present value of cumulative net incremental benefits evaluated from 2025 through 2050 would range from $13.1 billion to $56.2 billion at a 3 percent discount rate, or $9.3 billion to $53.3 billion at a 7 percent discount rate. These comprise cumulative incremental climate benefits due to reducing HFC emissions (with a present value ranging from $5 billion to $51.1 billion) as well as cumulative incremental compliance savings (with a present value ranging from $5.1 billion to $8 billion at a 3 percent discount rate or $2.1 billion to $4.2 billion at a 7 percent discount rate).

The estimation of incremental benefits due to reductions in HFC emissions resulting from the proposed restrictions involved three steps. First, the difference between the consumption of HFCs realized under this proposed rule and the consumption that would have been expected based on the analysis in the Allocation Framework RIA as adjusted by the Addendum for the proposed 2024 Allocation Rule was calculated for each year of the restrictions in metric tons of carbon dioxide equivalent ($MTCO_2e$). Although the Allocation Framework Rule only required allowances for domestic bulk consumption (*i.e.,* in that rule, EPA defines consumption, with respect to a regulated substance, to mean bulk production plus bulk imports minus

bulk exports), the consumption reduction estimates in the Allocation Framework RIA included reductions in imported products containing HFCs. Second, using EPA's Vintaging Model, the changes in consumption were used to estimate changes in HFC emissions, which generally lag consumption by some time as HFCs incorporated into equipment and products are eventually released to the environment. Finally, the climate benefits were calculated by multiplying the HFC emission reductions for each year by the appropriate social cost of HFC to arrive at the monetary value of HFC emission reductions.

The incremental climate benefits of this rule derive mostly from preventing the emissions of HFCs with high GWPs, thus reducing the damage from climate change that would have been induced by those emissions. The emission reductions attributed to this proposed rule are only those beyond the reductions expected based on the Allocation Framework Rule as updated by the proposed 2024 Allocation Rule, due to more rapid and/or comprehensive transitions to HFC substitutes in certain sectors or subsectors than would otherwise occur in the Allocation Framework Rule compliance case. The reduction in emissions follows from a reduction in the production and consumption of HFCs measured in millions of $MTCO_2e$, or $MMTCO_2e$, that would occur as a result of the restrictions proposed in this rule. It is assumed that all HFCs produced or consumed would be emitted eventually, either in their initial use (*e.g.,* as propellants), during the lifetime of HFC-containing products (*e.g.,* off-gassing from closed-cell foams or leaks from refrigeration systems), or during servicing—including the reuse of HFC recovered and possibly reclaimed—or disposal of HFC-containing products.

EPA recognizes the shortcomings and limitations associated with the current interim IWG estimates and underlying methodology. Since the SC–HFC estimates are based on the same methodology underlying the SC–GHG estimates presented in the IWG February 2021 TSD, they share a number of limitations that are common to those SC–GHG estimates. The limitations were outlined in the February 2021 TSD and include that the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower. Additionally, the Integrated Assessment Models (IAMs) used to produce these estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature, and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research.

The modeling limitations do not all work in the same direction in terms of their influence on the SC–HFC estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the SC–GHG estimates likely underestimate the damages from GHG emissions. Therefore, as a member of the IWG involved in the development of the February 2021 TSD, EPA agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer reviewed science.

B. Scoping Analysis of Imports of Regulated Products

In the Technology Transitions Rule RIA addendum, EPA examined the scope of HFCs supplied in and emitted from equipment and products that are imported to the United States containing HFCs. We explained that the Allocation Framework Rule program does not require the expenditure of allowances when importing products with HFCs to the United States. We also indicated in the Allocation Framework Rule that subsection (i) of the AIM Act provided authority that would be appropriate to address such imports. In this proposed rule, under subsection (i) of the AIM Act, restrictions are proposed to apply equally to imported and domestically manufactured products and equipment that contain regulated substances or blends containing a regulated substance.

In the RIA addendum, we reiterate that while the Allocation Framework Rule did not restrict imports of products containing HFCs, the analysis performed for that rule as well as the proposed 2024 Allocation Rule assumed a whole-market approach. In other words, transitions that were selected by the models to meet HFC consumption reductions were assumed to apply equally to imported products and domestically manufactured products. We were not at the time able to distinguish the two because the models used (*i.e.,* the Vintaging Model and the MAC model) are agnostic as to the location of product manufacture. The models are used to project demand for and emissions from products containing HFCs in the United States or HFC emitting processes carried out in the United States.

To understand the historical and potential future scope of imports in products, and the effects that the proposed restrictions could have, EPA evaluated additional information to analyze eight scenarios as explained in Annex D to the RIA addendum. The scenarios derived from two approaches at estimates of what HFCs or substitutes are contained in the imported products, two scenarios for how future imports would grow, and two methods of evaluating the substitutes that would be used in imported products to comply with the proposed restrictions. From these calculations of reductions in the supply of HFCs inside products, we applied a simplified emission model to estimate the time-dependent emission reductions, which due to the multi-year use of some products lag the initial supply. We used these emission reduction estimates, by gas over time, and the same SC–HFCs factors from the Allocation Framework RIA, to derive climate benefits. As described in the RIA addendum, these estimates are provided as a scoping analysis and are considered in whole just a subset of the climate benefits achieved from other actions taken under the AIM Act.

As detailed in Annex D to the RIA addendum, annual reductions in the supply of HFCs in imported products ranged from 30.0 to 46.6 $MMTCO_2e$ in 2029, from 31.0 to 54.1 $MMTCO_2e$ in 2034, and from 31.0 to 57.1 $MMTCO_2e$ in 2036, depending on the scenario. The cumulative reductions for the years 2025 through 2050 ranged from 829 to 1,540 $MMTCO_2e$, equal to about 12 to 23 percent of the projected reductions in the Allocation Rules analysis and about 11 to 20 percent of the combined projected reductions due to the Allocation Rules plus the incremental reductions due to this proposed Technology Transitions Rule.

The emission reductions lag the reductions in supply as explained in this section above but increase significantly as products expend their lifecycle and HFCs are emitted. Annual emission reductions ranged from 0 to 0.8 $MMTCO_2e$ in 2029, from 0 to 1.0 $MMTCO_2e$ in 2034, and from 0.9 to 2.8 $MMTCO_2e$ in 2036, depending on the scenario. The cumulative emissions reductions for the years 2025 through 2050 ranged from 318 to 459 $MMTCO_2e$, equal to about 7 to 10 percent of the projected reductions in the Allocation

Rules analysis and essentially the same percentages for the combined projected reductions in the Allocation Rules analysis plus the incremental reductions due to this proposed Technology Transition Rule.

Climate benefits of the emission reductions are shown in Table 9. As noted in this section above, these benefits are not considered additional to the Allocation Framework Rule or to this proposed rule and are shown to inform the reader of the potential scope of the benefits from restricting imported products using HFCs.

TABLE 9—CLIMATE BENEFITS FROM RESTRICTING IMPORTS OF REGULATED PRODUCTS FOR 2025–2050

[Billions of 2020$, discounted to 2022]

Year	Net climate benefits at 3% (average) discount rate
	Range of eight scenarios
2025	0.
2029	0.
2034	0 to 0.1.
2036	0.1 to 0.2.
2040	2.2 to 2.7.
2045	3.0 to 4.1.
2050	4.0 to 6.6.

XI. Statutory and Executive Order Review

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

This action is an economically significant regulatory action that was submitted to OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. A summary of the potential costs and benefits associated with this action is included in section X of this preamble, and EPA prepared an analysis of the potential costs and benefits associated with this action, which is available in Docket Number EPA–HQ–OAR–2021–0643.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number [2742.01]. You can find a copy of the ICR in the docket, and it is briefly summarized here.

Subsection (k)(1)(C) of the AIM Act states that section 114 of the CAA applies to the AIM Act and rules promulgated under it as if the AIM Act were included in title VI of the CAA. Thus, section 114 of the Clean Air Act, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA, also applies to and supports this rulemaking.

EPA is proposing to apply labeling and packaging requirements to products using either an HFC or a blend containing an HFC, in the sectors and subsectors covered by this proposed rule, in order to encourage compliance and aid enforcement. EPA is also proposing recordkeeping and reporting requirements for any entity that domestically manufactures or imports regulated products to allow the Agency to review data and identify noncompliance with GWP restrictions and inaccurate reporting.

Respondents/affected entities: Respondents and affected entities will be individuals or companies that manufacture, import, export, package, sell or otherwise distribute a product within the sectors or subsectors addressed by this proposed rule that uses or is intended to use certain HFCs that are defined as a regulated substance under the AIM Act, or blends that contain a regulated substance.

Respondent's obligation to respond: Mandatory (AIM Act and section 114 of the CAA).

Estimated number of respondents: 199,086,175.

Frequency of response: Quarterly, annually, and as needed depending on the nature of the report.

Total estimated burden: 69,355 hours (per year) in the first year; 56,520 hours per year in all following years. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost[188]: $27,107,658 (per year) in the first year, $25,475,817 per year thereafter, includes $19,955,215 annualized capital or operation & maintenance costs.

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 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 EPA using the docket identified at the beginning of this rule. EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than January 17, 2023.

[188] Costs are provided in 2022 dollars.

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. The small entities subject to the requirements of this action include manufacturers of equipment or products within the affected subsectors (*e.g.,* manufacturers of stand-alone/self-contained refrigeration systems, manufacturers of aerosol products, manufacturers of foam products and appliances containing foam) or end-users of equipment within affected subsectors (*e.g.,* supermarkets, warehouse clubs/superstores, convenience stores). EPA estimates that approximately 162 of the 51,047 potentially affected small businesses could incur costs in excess of one percent of annual sales and that approximately 110 small businesses could incur costs in excess of three percent of annual sales. Because there is not a significant percentage of small businesses that may experience a significant impact, it can be presumed that this action will have no SISNOSE. Details of this analysis are presented in *Economic Impact Screening Analysis for Restrictions on the Use of Hydrofluorocarbons under Subsection (i) of the American Innovation and Manufacturing Act,* which is available in Docket Number EPA–HQ–OAR–2021–0643.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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 not have substantial direct effects on tribal governments, 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 Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and will share information on this rulemaking through this and other fora.

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

This action is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of climate change on children.

GHGs, including HFCs, contribute to climate change. The GHG emissions reductions resulting from implementation of this rule will further improve children's health. The assessment literature cited in EPA's 2009 and 2016 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects. The assessment literature since 2016 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience.

These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses, and mental health effects resulting from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with heat waves, storms, and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households. More detailed information on the impacts of climate change to human health and welfare is provided in section III.B of this preamble.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or indigenous peoples. EPA carefully evaluated available information on HFC substitute production facilities and the characteristics of nearby communities to evaluate these impacts in the context of this proposed rulemaking. Based on this analysis, EPA finds evidence of environmental justice concerns near HFC production facilities from cumulative exposure to existing environmental hazards in these communities. However, the Agency recognizes that restricting HFC use under the Allocation Framework Rule may cause significant changes in the location and quantity of production of both HFCs and their substitutes, and that these changes may in turn affect emissions of hazardous air pollutants at chemical production facilities. Thus, given uncertainties about where and in what quantities HFC substitutes will be produced, EPA cannot determine the extent to which this rule will exacerbate or reduce existing disproportionate adverse effects on communities of color and low-income people as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The EPA believes that it is practicable to assess whether this action is likely to result in new disproportionately high and adverse effects on people of color, low-income populations and/or indigenous peoples. A summary of the Agency's approach for considering potential environmental justice concerns as a result of this rulemaking can be found in section III.C of the preamble, and our environmental justice analysis can be found in the RIA addendum, available in the docket. Based on the analysis, EPA determined that this rule will reduce emissions of potent GHGs, which will reduce the effects of climate change, including the public health and welfare effects on people of color, low-income populations and/or indigenous peoples. As noted in section III.C of this preamble, the Agency will continue to evaluate the impacts of this program on communities with environmental justice concerns and consider further action, as appropriate, to protect health in communities affected by HFC substitute production.

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate change, Emissions, Imports, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

■ 2. Add subpart B consisting of §§ 84.50 through 84.66 to part 84 to read as follows:

Subpart B—Restrictions on the Use of Hydrofluorocarbons

Sec.

84.50 Purpose.

84.52 Definitions.
84.54 Prohibitions on use of hydrofluorocarbons.
84.56 Sectors and subsectors subject to use restrictions.
84.58 Exemptions.
84.60 Labeling.
84.62 Recordkeeping and reporting.
84.64 Technology transitions petition requirements.
84.66 Global warming potentials.

§ 84.50 Purpose.

The purpose of the regulations in this subpart is to implement subsection (i) of 42 U.S.C. 7675, with respect to establishing restrictions on the use of a regulated substance in the sector or subsector in which the regulated substance is used, and to provide requirements associated with the submission of petitions seeking such restrictions.

§ 84.52 Definitions.

For the terms not defined in this subpart but that are defined in § 84.3, the definitions in § 84.3 shall apply. For the purposes of this subpart B:

Blend containing a regulated substance means any mixture that contains one or more regulated substances used in a sector or subsector.

Export means the transport of a regulated product from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for onboard use.

Exporter means the person who contracts to sell any regulated product for export or transfers a regulated product to an affiliate in another country.

Importer means any person who imports any regulated product into the United States. Importer includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes:

(i) The consignee;

(ii) The importer of record;

(iii) The actual owner; or

(iv) The transferee, if the right to withdraw merchandise from a bonded warehouse has been transferred.

Manufacture means to complete a product's manufacturing and assembly processes such that it is ready for initial sale, distribution, or operation. For equipment that is assembled and charged in the field, manufacture means to complete the circuit holding the regulated substance, charge with a full charge, and otherwise make functional for use for its intended purpose.

Product means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task. The term product includes, but is not limited to: equipment, appliances, components, subcomponents, foams, foam blowing systems (*e.g.,* pre-blended polyols), fire suppression systems or devices, aerosols, pressurized dispensers, and wipes.

Regulated product means any product in the sectors or subsectors identified in § 84.56 that contains or was manufactured with a regulated substance or a blend that contains a regulated substance, including products intended to be used with a regulated substance, or that is otherwise subject to the prohibitions of this subpart.

Retrofit means to upgrade existing equipment where the regulated substance is changed, which—

(i) Includes the conversion of equipment to achieve system compatibility; and

(ii) May include changes in lubricants, gaskets, filters, driers, valves, o-rings, or equipment components for that purpose. Examples of equipment subject to retrofit include air-conditioning and refrigeration appliances, fire suppression systems, and foam blowing equipment.

Sector means a broad category of applications including but not limited to: refrigeration, air conditioning and heat pumps; foam blowing; aerosols; chemical manufacturing; cleaning solvents; fire suppression and explosion protection; and semiconductor manufacturing.

Subsector means processes, classes of applications, or specific uses that are related to one another within a single sector or subsector.

Substitute means any substance, product, or alternative manufacturing process, whether existing or new, that is used, or intended for use, in a sector or subsector with a lower global warming potential than the regulated substance, whether neat or used in a blend, to which a use restriction would apply.

Use means for any person to take any action with or to a regulated substance, regardless of whether the regulated substance is in bulk, contained within a product, or otherwise, except for the destruction of a regulated substance. Actions include, but are not limited to, the utilization, deployment, sale, distribution, discharge, incorporation, transformation, or other manipulation.

§ 84.54 Prohibitions on use of hydrofluorocarbons.

(a) Effective January 1, 2025, no person may manufacture or import any product that uses or is intended to use a regulated substance or blend containing a regulated substance as listed in § 84.56(a), (c), (d), and (e).

(b) Effective January 1, 2026, no person may sell or distribute, offer to sell or distribute, make available to sell or distribute, purchase or receive, attempt to purchase or receive, or export any product that uses or is intended to use a regulated substance or blend containing a regulated substance as listed in § 84.56(a), (c), (d), and (e), except after a period of ordinary utilization or operation of the product by an ultimate consumer.

(c) Effective [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], beginning model year 2025, no person may manufacture or import any mobile vehicle air-conditioning system for light-duty passenger cars and trucks that uses or is intended to use a regulated substance or a blend containing a regulated substance as listed in § 84.56(b).

(d) Effective January 1, 2026, no person may sell or distribute, offer to sell or distribute, make available to sell or distribute, purchase or receive, attempt to purchase or receive, or export any mobile vehicle air-conditioning system for light-duty passenger cars and trucks that uses or is intended to use a regulated substance or a blend containing a regulated substance as listed in § 84.56(b), except after a period of ordinary utilization or operation of the product by an ultimate consumer.

(e) Effective [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], beginning model year 2026, no person may manufacture or import any mobile vehicle air-conditioning system for medium-duty passenger vehicles, heavy-duty pick-up trucks, complete heavy-duty vans, and certain nonroad vehicles that uses or is intended to use a regulated substance or a blend containing a regulated substance as listed in § 84.56(b).

(f) Effective January 1, 2027, no person may sell or distribute, offer to sell or distribute, make available to sell or distribute, purchase or receive, attempt to purchase or receive, or export any mobile vehicle air-conditioning system for medium-duty passenger vehicles, heavy-duty pick-up trucks, complete heavy-duty vans, and certain nonroad vehicles that uses or is intended to use a regulated substance or a blend containing a regulated substance as listed in § 84.56(b), except after a period of ordinary utilization or operation of the product by an ultimate consumer.

(g) Effective January 1, 2026, no person may manufacture or import any

residential and light commercial air conditioning and heat pump—variable refrigerant flow system, that uses or is intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater.

(h) Effective January 1, 2027, no person may sell or distribute, offer to sell or distribute, make available to sell or distribute, purchase or receive, attempt to purchase or receive, or export any residential and light commercial air conditioning and heat pump—variable refrigerant flow system, that uses or is intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater, except after a period of ordinary utilization or operation of the product by an ultimate consumer.

(i) Effective January 1, 2025, no person may import, sell, distribute, offer for sale or distribution, or make available for sale or distribution, any regulated product that is not labeled in accordance with § 84.60.

(j) No person may sell, distribute, offer for sale or distribution, or make available for sale or distribution, any product within a sector or subsector containing, using, or intended to use a regulated substance or blend containing a regulated substance that is in violation of paragraphs (a) through (i) of this section, except for such actions needed to re-export or recover the regulated substance and destroy the product. Every kilogram of a regulated substance or blend containing a regulated substance contained in or used in a product in contravention of this paragraph constitutes a separate violation of this subpart. Every kilogram of a regulated substance or blend containing a regulated substance intended for use in a product in contravention of this paragraph constitutes a separate violation of this subpart. Sale or distribution, or offer for sale or distribution, of products containing, using, or intended to use less than one kilogram of a regulated substance or blend containing a regulated substance in contravention of this paragraph constitutes a violation of this subpart.

(k) (1) No person may provide false, inaccurate, or misleading information to EPA when reporting or providing any communication required under this subpart.

(2) No person may falsely indicate through marketing, packaging, labeling, or other means that a product sold or distributed, or offered for sale or distribution, uses a regulated substance, blend containing a regulated substance, or substitute that differs from the regulated substance, blend containing a regulated substance, or substitute that is actually used.

(l) Section (k) of the AIM Act states that sections 113, 114, 304, and 307 of the Clean Air Act (42 U.S.C. 7413, 7414, 7604, 7607) shall apply to this section and any rule, rulemaking, or regulation promulgated by the Administrator pursuant to this section as though this section were expressly included in title VI of that Act (42 U.S.C. 7671 *et seq.*). Violation of this part is subject to Federal enforcement and the penalties laid out in section 113 of the Clean Air Act.

§ 84.56 Sectors and subsectors subject to use restrictions.

(a) *Refrigeration, air conditioning, and heat pump.* Products in the following subsectors within the refrigeration, air conditioning, and heat pump sector are subject to the prohibitions in § 84.54(a) and (b):

(1) Industrial process refrigeration systems with refrigerant charge capacities of 200 pounds or greater, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater, except as noted in § 84.56(a)(3);

(2) Industrial process refrigeration systems with refrigerant charge capacities less than 200 pounds, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 300 or greater, except as noted in § 84.56(a)(3);

(3) Industrial process refrigeration, specifically the high temperature side of cascade systems used in industrial process refrigeration applications, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 300 or greater;

(4) Retail food refrigeration—stand-alone units, when using or intended to use a regulated substance, or a blend containing a regulated substance with a global warming potential of 150 or greater;

(5) Retail food refrigeration—refrigerated food processing and dispensing equipment, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater;

(6) Retail food refrigeration—supermarket systems with refrigerant charge capacities of 200 pounds or greater, when using or intended to use a regulated substance, or a blend containing a regulated substance with a global warming potential of 150 or greater, except as noted in § 84.56(a)(8);

(7) Retail food refrigeration—supermarket systems with refrigerant charge capacities less than 200 pounds, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 300 or greater, except as noted in § 84.56(a)(8);

(8) Retail food refrigeration—supermarket, specifically the high temperature side of cascade systems used in retail food refrigeration—supermarket applications, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 300 or greater;

(9) Retail food refrigeration—remote condensing units with refrigerant charge capacities of 200 pounds or greater, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater;

(10) Retail food refrigeration—remote condensing units with refrigerant charge capacities less than 200 pounds, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 300 or greater;

(11) Cold storage warehouse systems with refrigerant charge capacities of 200 pounds or greater, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater, except as noted in § 84.56(a)(13);

(12) Cold storage warehouse systems with refrigerant charge capacities less than 200 pounds, when using or intended to use a regulated substance, or a blend containing a regulated substance with a global warming potential of 300 or greater, except as noted in § 84.56(a)(13);

(13) Cold storage warehouse, specifically the high temperature side of cascade systems used in cold storage facility applications, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 300 or greater;

(14) Ice rink systems, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater;

(15) Automatic commercial ice machines—standalone, with refrigerant charge capacities of 500 grams or lower, when using or intended to use a regulated substance or a blend containing a regulated substance with a

global warming potential of 150 or greater;

(16) Automatic commercial ice machines—standalone, with refrigerant charge capacities of more than 500 grams, when using or intended to use any of the following: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, R–410B, R–407A, R–410A, R–442A, R–417C, R–407F, R–437A, R–407C, RS–24 (2004 formulation), and HFC–134a;

(17) Automatic commercial ice machines—remote, when using or intended to use any of the following: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B;

(18) Transport refrigeration—intermodal containers, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater;

(19) Transport refrigeration—road systems, when using or intended to use any of the following: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B;

(20) Transport refrigeration—marine systems, when using or intended to use any of the following: R–404A, R–507, R–507A, R–428A, R–422C, R–434A, R–421B, R–408A, R–422A, R–407B, R–402A, R–422D, R–421A, R–125/R–290/R–134a/R–600a (55/1/42.5/1.5), R–422B, R–424A, R–402B, GHG–X5, R–417A, R–438A, and R–410B;

(21) Residential refrigeration systems, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater;

(22) Chillers—industrial process refrigeration, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater, except where the temperature of the chilled fluid leaving the chiller is less than −58 °F (−50 °C);

(23) Chillers—comfort cooling, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater;

(24) Residential and light commercial air-conditioning and heat pump systems, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater, except for variable refrigerant flow air-conditioning systems;

(25) Residential dehumidifiers, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 700 or greater; and

(26) Vending machines, when using or intended to use a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater.

(b) *Motor vehicle air conditioning.* Products in the following subsectors within the motor vehicle air conditioning subsector are subject to the prohibitions in § 84.54(c), (d), (e), and (f), when using a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater:

(1) Light-duty passenger cars;

(2) Light-duty trucks;

(3) Medium-duty passenger vehicles;

(4) Heavy-duty pickup trucks;

(5) Complete heavy-duty vans; and

(6) Certain nonroad vehicles (*i.e.,* agricultural tractors greater than 40 horsepower; self-propelled agricultural machinery; compact equipment; construction, forestry, and mining equipment; and commercial utility vehicles only).

(c) *Foam blowing.* Products in the following subsectors within the foam blowing sector are subject to the prohibitions in § 84.54(a) and (b), when using a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater:

(1) Phenolic insulation board and bunstock;

(2) Polystyrene—extruded boardstock and billet;

(3) Rigid polyurethane—appliance foam;

(4) Rigid polyurethane—slabstock and other;

(5) Rigid polyurethane—commercial refrigeration;

(6) Rigid polyurethane—sandwich panels;

(7) Rigid polyurethane—marine flotation foam; and

(8) Spray foam (*i.e.,* rigid polyurethane high-pressure two-component, rigid polyurethane low-pressure two-component, and rigid polyurethane one-component foam sealants).

(i) Spray foam when used for space vehicles as defined in § 84.3 is excluded from this prohibition.

(ii) [Reserved]

(d) *Aerosols.* Products in the aerosol sector are subject to the prohibitions in § 84.54(a) and (b), when using a regulated substance or a blend containing a regulated substance with a global warming potential of 150 or greater.

(e) *Full restrictions on the use of regulated substances.* Products in the following subsectors within the foam blowing sector are subject to the prohibitions in § 84.54(a) and (b), when using a regulated substance or a blend containing a regulated substance:

(1) Flexible polyurethane;

(2) Integral skin polyurethane;

(3) Polyolefin;

(4) Polystyrene—extruded sheet; and

(5) Rigid polyurethane and polyisocyanurate laminated boardstock.

§ 84.58 Exemptions.

The regulations under this subpart do not apply to:

(a) Equipment in existence prior to December 27, 2020; and

(b) Any product using a regulated substance or a blend containing a regulated substance, or intended to use a regulated substance or a blend containing a regulated substance, in an application listed at § 84.13(a), for a year or years for which that application receives an application-specific allowance as defined at § 84.3.

§ 84.60 Labeling.

(a) Any regulated product within a sector or subsector listed in § 84.56 that is imported, sold, distributed, offered for sale or distribution, or made available for sale must have a permanent label compliant with paragraph (b) stating:

(1) The chemical name(s) or American Society of Heating, Refrigerating and Air-Conditioning Engineers designation of the regulated substance(s) or blend containing a regulated substance;

(2) The global warming potential of the regulated substance or blend containing a regulated substance according to § 84.66, labeled as ''global warming potential'';

(3) The full date, or at minimum the four-digit year, of manufacture. For field charged equipment, this shall be the date of first charge and be completed at first charge.

(4) An indication that the full refrigerant charge is either greater than two hundred pounds or less than two hundred pounds for products in the following subsectors:

(i) Industrial process refrigeration;

(ii) Retail food refrigeration—supermarket systems;

(iii) Retail food refrigeration—remote condensing units; and

(iv) Cold storage warehouses.

(5) An indication that the full refrigerant charge is either greater than 500 grams or is equal to or less than 500 grams for products in the following subsector:

(i) Automatic commercial ice machines—standalone.

(ii) [Reserved]

(b) The permanent label must be:

(1) In English;

(2) Durable and printed or otherwise labeled on, or affixed to, an external surface of the product;

(3) Readily visible and legible;

(4) Able to withstand open weather exposure without a substantial reduction in visibility or legibility; and

(5) Displayed on a background of contrasting color.

(c) For products sold or distributed, offered for sale or distribution, or made available electronically through online commerce, the label must be readily visible and legible in either photographs of the products, photographs of packaging materials that contain the required information, or an item description that contains the required information.

(d) Any regulated product lacking a label will be presumed to use a regulated substance with a global warming potential that exceeds the limit in § 84.56.

§ 84.62 Recordkeeping and reporting.

(a) *Reporting.* (1) Any person, with the exception of persons in (a)(3), who imports or manufactures a product that uses or is intended to use a regulated substance or blend containing a regulated substance, must comply with the following recordkeeping and reporting requirements:

(i) Reports must be submitted quarterly to EPA within 45 days of the end of the applicable reporting period;

(ii) Reports, petitions, and any related supporting documents must be submitted electronically in a format specified by EPA;

(iii) Each report shall be signed and attested by a responsible officer;

(iv) Each report must provide a statement of certification that the data are accurate, the products use only allowed regulated substances and are properly labeled.

(2) Reports provided to EPA must include the following information:

(i) The sector and subsector of the product based on the categorization in § 84.56;

(ii) For each type of factory-charged equipment with a unique combination of charge size and regulated substance or blend containing a regulated substance, the identity of the regulated substance or blend containing a regulated substance and its global warming potential according to § 84.66, charge size (holding charge, if applicable), and number of units imported or domestically manufactured;

(iii) For each type of dry shipped equipment with a unique combination of intended charge size and intended regulated substance or blend containing a regulated substance, the identity of the intended regulated substance or blend containing a regulated substance and its global warming potential according to § 84.66, charge size, and number of units imported or domestically manufactured;

(iv) Total mass in metric tons of each regulated substance or blend containing a regulated substance imported or domestically manufactured in factory-charged equipment pursuant to this paragraph (a)(2); and the mass of the regulated substance or blend containing a regulated substance per unit of equipment type.

(v) Dates on which the products were imported or domestically manufactured.

(3) Persons that field-charge equipment in order to complete the manufacture of a product are not subject to the reporting provision in paragraph (a)(1) of this section.

(4) Any failure by an importer or domestic manufacturer of a product that uses or is intended to use a regulated substance or a blend containing a regulated substance to report required information or provide accurate information pursuant to this section shall be considered a violation of this section.

(b) *Recordkeeping.* (1) Each importer or domestic manufacturer of a product that uses or is intended to use a regulated substance or blend containing a regulated substance must retain the following records for a minimum of three years and make them available to EPA upon request:

(i) Records that form the basis of the reports outlined in paragraph (a)(2) of this section; and

(ii) The company or retailer to whom the regulated products were sold, distributed, or in any way conveyed to.

(2) In addition to the records in paragraph (b)(1) of this section, importers of products containing a regulated substance or a blend containing a regulated substance must retain the following records for each import:

(i) A copy of the bill of lading;

(ii) The invoice;

(iii) The U.S. Customs and Border Protection entry documentation;

(iv) Port of entry through which the products passed;

(v) Country of origin and if different the country of shipment to the United States.

(3) Persons that field charge equipment in order to complete the manufacture of a product are not subject to the recordkeeping provision in paragraph (b)(1) of this section.

§ 84.64 Technology transitions petition requirements.

(a) *Required elements.* Each petition sent to the Administrator under subsection (i) of the AIM Act shall include the following elements:

(1) *Identification of the sector or subsector.* Petitioners must identify the sector(s) or subsector(s) for which restrictions on use of the regulated substance would apply.

(2) *Identification of restriction on the use of a regulated substance.* For each sector or subsector identified in a petition, petitioners must identify the restriction on the use of a regulated substance through either of the following:

(i) A global warming potential limit that will apply to regulated substances or blends containing regulated substances with global warming potentials at or above that limit.

(ii) Identification of the regulated substance or blend containing regulated substance to be restricted and its global warming potential according to § 84.66.

(3) *Identification of effective date.* For each restriction on the use of a regulated substance contained in petitions, petitioners must include an effective date on which the regulated substance use restriction would commence, or state that the effective date should be one year after promulgation of the rule. Petitioners should provide information supporting the identified effective date.

(4) *Statement on the use of negotiated rulemaking.* Petitioners must include a request that the Administrator negotiate with stakeholders in accordance with the negotiated rulemaking procedure provided for under subchapter III of chapter 5 of title 5, United States Code. Petitioners must include an explanation of their position to support or oppose the use of the negotiated rulemaking procedure.

(5) *Information supporting the requested restriction.* For each requested restriction, to the extent practicable, petitioners must provide information related to the considerations provided in AIM Act subsection (i)(4) to facilitate the Agency's review of the petition.

(b) *Submission of petitions.* Any petition submitted to the Administrator must be submitted electronically using the designated email address listed on

the EPA Technology Transitions website.

§ 84.66 Global warming potentials.

(a) *Regulated substances.* The global warming potential of a regulated substance is the exchange value for the regulated substance listed in subsection (c) of the AIM Act and in appendix A to this part 84.

(b) *Blends containing a regulated substance.* For blends containing a regulated substance, the global warming potential of the blend is the sum of the global warming potentials of each constituent of the blend multiplied by that constituent's nominal mass fraction within the blend. The global warming potential of each constituent shall be as follows:

(1) For each constituent within the blend that is a regulated substance, the global warming potential shall be as provided in § 84.66(a);

(2) Where trans-dichloroethylene, also referred to as HCO–1130(E), is a constituent of the blend, the global warming potential of this constituent shall be one;

(3) Where cis-1-chloro-2,3,3,3-tetrafluoropropene, also referred to as HCFO–1224yd(Z), is a constituent of the blend, the global warming potential of this constituent shall be five;

(4) For each constituent that is not a regulated substance, is not HCO–1130(E), is not HCFO–1224yd(Z), but does have a global warming potential listed in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, the global warming potential of the constituent shall be that listed as the 100-year integrated global warming potential and shall be the net global warming potential;

(5) For each constituent that is not a regulated substance, is not HCO–1130(E), is not HCFO–1224yd(Z), and is not listed in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, the global warming potential of the constituent shall be that listed as the 100-year integrated global warming potential in the 2018 report by the World Meteorological Organization, titled ''Scientific Assessment of Ozone Depletion: 2018'';

(6) For each constituent that is not a regulated substance, is not HCO–1130(E), is not HCFO–1224yd(Z), is not listed in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, and is not listed in the 2018 report by the World Meteorological Organization, the global warming potential of the constituent shall be that listed in Table A–1 to 40 CFR part 98, as it existed on December 15, 2022, including the use of default global warming potential values for constituents that are not specifically listed in that table;

(7) For cases in (4) through (6) above where a qualifier, including but not limited to approximately, ~, less than, <, much less than, <<, greater than, and >, is provided with a global warming potential value, the value shown shall be the global warming potential of the constituent without consideration of the qualifier; (8) For constituents that do not have a global warming potential as provided in paragraphs (b)(1) through (b)(7) of this section, the global warming potential of the constituent shall be zero.

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Part IV

Department of Homeland Security

Department of Labor

Employment and Training Administration

8 CFR Parts 214 and 274a

20 CFR Part 655

Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers; Temporary Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2731–22, DHS Docket No. USCIS–2022–0015]

RIN 1615–AC82

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA–]

RIN 1205–AC14

Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 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; request for comments.

SUMMARY: The Secretary of Homeland Security, in consultation with the Secretary of Labor, is exercising his time-limited Fiscal Year (FY) 2023 authority and increasing the total number of noncitizens who may receive an H–2B nonimmigrant visa by up to, but no more than, a total of 64,716 for the entirety of FY 2023. To assist U.S. businesses that need workers to begin work on different start dates, the Departments have decided to distribute the supplemental visas in several allocations, including two separate allocations for the second half of fiscal year 2023. Out of the total 64,716 visas made available in this rule, the Departments have decided to reserve 20,000 visas for nationals of Guatemala, El Salvador, Honduras, or Haiti. The Departments will make all 64,716 visas available only to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form. In addition to making the additional 64,716 visas available under the FY 2023 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 December 15, 2022 through December 15, 2025. The amendments to title 20 of the Code of Federal Regulations in this rule are effective from December 15, 2022 through September 30, 2023, except for 20 CFR 655.67 which is effective from December 15, 2022 through September 30, 2026.

Petition dates: DHS will not accept any H–2B petitions under provisions related to the FY 2023 supplemental numerical allocations after September 15, 2023, and will not approve any such H–2B petitions after September 30, 2023. The provisions related to portability are only available to petitioners and H–2B nonimmigrant workers initiating employment through the end of January 24, 2024.

Submission of public comments: The Departments are accepting written comments on the temporary final rule and on the new information collection. Please follow the instructions in the **ADDRESSES** section to ensure your comment is submitted to the correct docket.

Comments on the Rule: All public comments on the temporary final rule, identified by DHS Docket No. USCIS–2022–0015, must be submitted on or before February 13, 2023. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

Comments on the Information Collection: The Office of Foreign Labor Certification within the U.S. Department of Labor will accept comments in connection with the new information collection Form ETA–9142B–CAA–7 associated with this rule until February 13, 2023. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit written comments on the temporary final rule and/or new information collection. Please follow the instructions directly below depending on whether you are submitting a comment on the rule or the DOL Information Collection.

Comments on the rule: You may submit comments on the entirety of this temporary final rule package, identified by DHS Docket No. USCIS–2022–0015, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the website instructions for submitting comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to USCIS or DHS officials, will not be considered comments on the temporary final rule and may not receive a response. Please note that USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 240–721–3000 (not a toll-free call) for alternate instructions.

Comments on the Information Collection: You may submit written comments on the new information collection Form ETA–9142B–CAA–7, identified by Regulatory Information Number (RIN) 1205–AC14, 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–AC14 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–7: 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 2023 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 release of an additional 64,716 H–2B visas for FY 2023, subject to certain conditions. The 64,716 visas are divided into the following allocations:

• For the first half of FY 2023: 18,216 immediately available visas limited to returning workers, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. The-se petitions must request employment start dates on or before March 31, 2023;

• For the early second half of FY 2023 (April 1 to May 14): 16,500 visas limited to returning workers, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. These early second half of FY 2023 petitions must request employment start dates from April 1, 2023, to May 14, 2023. Furthermore, employers must file these petitions no earlier than 15 days after the second half statutory cap [1] is reached;

• For the late second half of FY 2023: (May 15 to September 30): 10,000 visas limited to returning workers, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. These late second half of FY2023 petitions must request employment start dates from May 15, 2023, to September 30, 2023. Furthermore, employers must file these petitions no earlier than 45 days after the second half statutory cap is reached; and

• For the entirety of FY 2023: 20,000 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). Employers requesting an employment start date in the first half of FY 2023 may file such petitions immediately after the publication of this TFR. Employers requesting an employment start date in the second half of FY 2023 must file such petitions no earlier than 15 days after the second half statutory cap is reached.

To qualify for the FY 2023 supplemental caps 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 a Nonimmigrant Worker, with USCIS;

• Properly file the Form I–129, Petition for Nonimmigrant Worker, with USCIS at its California Service Center on or before September 15, 2023;

• 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 20,000 cap exempt from the returning worker requirement;

• Prepare and retain a detailed written statement describing how the employer is suffering irreparable harm or will suffer impending irreparable harm and how evidence demonstrates irreparable harm and supports their application; and

• Agree to comply with all applicable labor and employment laws, including health and safety laws pertaining to COVID–19, such as any rights to time off or paid time off to obtain COVID–19 vaccinations [2] or rights to reimbursement for travel to and from the nearest available vaccination site, and to 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, 2021, 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;

• 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;

• Contact in writing and in a language understood by the worker, all U.S. workers currently employed at the place of employment, disclose the terms of the job order, and request assistance in recruiting qualified U.S. workers for the job;

• Where the employer maintains a website for its business operations, post

[1] The term ''statutory cap'' refers to the 66,000 cap set forth at INA section 214(g)(1)(B) or the 33,300 semiannual caps at INA section 214(g)(10).

[2] The term ''COVID–19 vaccinations'' also includes COVID–19 booster shots.

the job opportunity in a conspicuous location on the employer's website; and

- Hire any qualified U.S. worker who applies or is referred for the job opportunity until the later of either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date of the SWA job order posting.

Petitioners filing H–2B petitions under this FY 2023 supplemental cap must retain documentation of compliance with the attestation requirements for 3 years from the date DOL approved the TLC, 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. DOL Office of Foreign Labor Certification (OFLC), DOL Wage and Hour Division (WHD), and USCIS Fraud Detection and National Security (FDNS) personnel have encountered non-compliance issues such as failure to pay the promised wage, failure to employ returning workers, failure to demonstrate irreparable harm, failure to conduct the additional recruitment steps, and failure to accurately disclose the beneficiary's work location(s).

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 exploitation and violations. In recognition of the substantial impact that non-compliance can have on both U.S. workers and H–2B workers, DHS and DOL again intend to conduct a significant number of audits focusing on irreparable harm and other worker protection provisions. And as it did as part of the FY 2022 second half H–2B supplemental cap TFR, DHS will again subject employers that have committed labor law violations in the H–2B program to additional scrutiny in the supplemental cap petition process.[3] DHS intends for this additional scrutiny to help ensure 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 also 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 2023 supplemental cap authority on or after October 1, 2023.

H–2B Portability

In addition to exercising its time-limited authority to make additional FY 2023 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[4] in valid H–2B status and who are beneficiaries of non-frivolous H–2B petitions received on or after January 25, 2023, or who are the beneficiaries of non-frivolous H–2B petitions that are pending as of January 25, 2023, 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 one year after the provision's effective date of January 25, 2023, in other words, at the end of January 24, 2024.

II. Background

A. Legal Framework

The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition 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],[5] 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[6] not authorized for employment). The Secretary may designate officers or employees to take and consider evidence concerning any matter that 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 the HSA, 6 U.S.C. 111(b)(1)(F), a primary mission

[3] *See Temporary Rule, 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,* 87 FR 30334, 30335 (May 18, 2022).

[4] 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).

[5] 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.

[6] 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.

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 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, must accompany an H–2B petition for temporary employment in the United States. 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).

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 the preceding H–2B supplemental cap TFR [7] and in this rule, and except for certain professional athletes being traded among organizations,[8] 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 maximum annual number (''statutory cap'') of noncitizens to whom DHS may issue H–2B visas or otherwise provide H–2B nonimmigrant status to perform temporary nonagricultural work is 66,000, distributed semiannually 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). Accordingly, with certain exceptions as described below, DHS may issue H–2B visas or provide H–2B nonimmigrant status to up to 33,000 noncitizens 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, are available for employers seeking to hire H–2B workers during the second half of the fiscal year.[9] If the number of petitions approved by DHS is insufficient to use all H–2B numbers in a given fiscal year, DHS cannot carry over the unused numbers for petition approvals for employment start dates beginning on or after the start of the next fiscal year.

In FYs 2005, 2006, 2007, and 2016, Congress exempted H–2B workers identified as returning workers from the annual H–2B cap of 66,000.[10] A returning worker is an H–2B worker who was previously counted against the annual H–2B cap during a designated period of time.[11] For example, Congress designated that returning workers for FY 2016 needed to have been counted against the cap during FY 2013, 2014, or 2015 to qualify for the exemption.[12] 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 semiannual visa allocation, the DOL regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work,[13] and the DHS regulatory requirement that an approved TLC accompany all H–2B petitions,[14] employers that wish to obtain visas for their workers under the semiannual allotment must act early to receive a TLC and file a petition with U.S. Citizenship and Immigration Services (USCIS). As a result, the date on which USCIS has reached sufficient H–2B petitions to reach the first half of the fiscal year statutory cap has trended earlier in recent years.[15] For FY 2022,

[7] The FY 2022 second half H–2B supplemental cap TFR included a portability provision at 8 CFR 214.2(h)(28)(iii)(A)(*1*)–(*2*), which remains in effect through January 24, 2023. *See Temporary Rule, 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,* 87 FR 30334 (May 18, 2022).

[8] *See* 8 CFR 214.2(h)(6)(vii) and 8 CFR 274a.12(b)(9).

[9] 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 2023 is from October 1, 2022, through September 30, 2023.

[10] *See* 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.

[11] *Cf.* INA section 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A).

[12] *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565.

[13] *See* 20 CFR 655.15(b).

[14] *See* 8 CFR 214.2(h)(6)(vi)(A).

[15] In fiscal years 2017 through 2021, USCIS received a sufficient number of H–2B petitions to reach or exceed the relevant first half statutory cap on January 10, 2017, December 15, 2017, December 6, 2018, November 15, 2019, and November 16, 2020, respectively. *See* USCIS, *USCIS Reaches the H–2B Cap for the First Half of Fiscal Year 2017, https://www.uscis.gov/archive/uscis-reaches-the-h-2b-cap-for-the-first-half-of-fiscal-year-2017* (Jan. 13,

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for the first time in more than a decade, USCIS received sufficient H–2B petitions to reach the first half of the fiscal year statutory cap before the start of the fiscal year.[16] This occurred even earlier in FY 2023, when USCIS received enough H–2B petitions to reach the FY 2023 first-half statutory cap on September 12, 2022.[17] There has also been a trend in recent years of increased demand for H–2B workers in the second half of the fiscal year.[18]

Congress, in recognition of historical and current demand has, for the last several fiscal years, authorized supplemental caps.[19] The authorization for the current supplemental cap is under section 101(6) of Division A of Public Law 117–180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (FY 2023 authority), which extended the authorization previously provided in section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103 (FY 2022 Omnibus), as discussed below.

C. FY 2022 Omnibus and FY 2023 Public Law 117–180

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. 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.[20] The Secretary of Homeland Security consulted with the Secretary of Labor and, on May 18, 2022, published a temporary final rule implementing the authority contained in section 204.[21]

On September 30, 2022, Congress passed Public Law 117–180, which authorizes the Secretary of Homeland Security to increase the number of H–2B visas available to U.S. employers in FY 2023 under the same terms and conditions provided in section 204 of Division O of the FY 2022 Omnibus.[22] In other words, Public Law 117–180 permits the Secretary of Homeland Security, after consultation with the Secretary of Labor, to provide up to 64,716 additional H–2B visas for FY 2023, notwithstanding the otherwise-established statutory numerical limitation set forth in the INA, for eligible employers whose employment needs for FY 2023 cannot be met under the general fiscal year statutory cap.[23] Under the Public Law 117–180 authority, DHS and DOL are jointly publishing this temporary final rule to authorize the issuance of no more than 64,716 additional visas for FY 2023 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 2023 supplemental cap expires at the end of

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2017); USCIS, *USCIS Reaches H–2B Cap for the First Half of Fiscal Year 2018, https://www.uscis.gov/archive/uscis-reaches-h-2b-cap-for-first-half-of-fy-2018* (Dec. 21, 2017); USCIS, *USCIS Reaches H–2B Cap for the First Half of Fiscal Year 2019, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2019 (Dec. 12, 2018); USCIS, USCIS Reaches H–2B Cap for the First Half of Fiscal Year 2020, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2020 (Nov. 20, 2019); USCIS, USCIS Reaches H–2B Cap for the First Half of Fiscal Year 2021, https://www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021* (Nov. 18, 2020).

[16] On October 12, 2021, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H–2B visas for temporary nonagricultural workers for the first half of fiscal year 2022, and that September 30, 2021 was the final receipt date for new cap-subject H–2B worker petitions requesting an employment start date before April 1, 2022. *See* USCIS, *USCIS Reaches H–2B Cap for the First Half of Fiscal Year 2022, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022* (Oct 12, 2021).

[17] On September 14, 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 first half of fiscal year 2023, and that September 12, 2022 was the final receipt date for new cap-subject H–2B worker petitions requesting an employment start date before April 1, 2023. *See* USCIS, *USCIS Reaches H–2B Cap for the First Half of Fiscal Year 2023, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023* (last updated Sept. 14, 2022).

[18] In recent years, DOL has received an increasing number of TLC applications for an increasing number of H–2B workers with April 1 start dates: DOL received 4,500 applications on January 1, 2018, covering more than 81,600 worker positions; DOL received 5,276 applications by January 8, 2019, covering more than 96,400 worker positions; DOL received 5,677 applications during the initial three-day filing window in 2020 covering 99,362 worker positions; DOL received 5,377 applications during the initial three-day filing window in 2021 covering 96,641 worker positions; DOL received 7,875 applications by January 7, 2022, covering 136,555 worker positions. *See* DOL, *Announcements, https://www.dol.gov/agencies/eta/foreign-labor/news.*

[19] *See* 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); section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus); 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, FY 2022 authority); and section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103 (FY 2022 Omnibus).

[20] DHS also considered using an alternative approach of calculating the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program, under which DHS measured the number of H–2B returning workers admitted at the ports of entry (66,792 for FY 2007). However, DHS considers USCIS petition data more accurate and verifiable than admission data when measuring workers approved for a certain fiscal year, as admission data may not accurately reflect which cap year the worker was approved for.

[21] *See 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,* 87 FR 30334 (May 18, 2022).

[22] *See* Public Law 117–180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Division A, section 101(6) (providing DHS funding and other authorities, including the authority to issue supplemental H–2B visas that was provided under title II of Division O of Pub. L. 117–103, through December 16, 2022).

[23] Appropriations and authorities provided by the continuing resolutions are available for the needs of the entire fiscal year to which the continuing resolution applies, although DHS's ability to obligate funds or exercise such authorities may lapse at the sunset of such resolution. *See, e.g.,* Comments on Due Date and Amount of District of Columbia's Contributions to Special Employee Retirement Funds, B–271304 (Comp. Gen. Mar. 19, 1996) (explaining that ''a continuing resolution appropriates the full annual amount regardless of its period of duration. . . . Standard continuing resolution language makes it clear that the appropriations are available to the extent and in the manner which would be provided by the pertinent appropriations act that has yet to be enacted (unless otherwise provided in the continuing resolution).''). Consistent with this principle, DHS interprets the current continuing resolution to provide DHS with the ability to authorize additional H–2B visa numbers with respect to all of FY 2023 subject to the same terms and conditions as the FY 2022 authority at any time before the continuing resolution expires, notwithstanding the reference to FY 2022 in the FY 2022 Omnibus.

that fiscal year. Therefore, USCIS will not approve H–2B petitions filed in connection with this FY 2023 supplemental cap authority on or after October 1, 2023.

As noted above, since FY 2017, Congress has enacted a series of public laws providing the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap beyond 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 2023 by the recent continuing resolution. During each fiscal year from FY 2017 through FY 2019, as well as during FY 2021 and FY 2022, the Secretary of Homeland Security, after consulting with the Secretary of Labor, determined that some American businesses could not satisfy their needs 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.[24] USCIS approved a total of 12,294 H–2B for H–2B classification under petitions filed pursuant to the FY 2017 supplemental cap increase.[25] 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.[26] The vast majority of the H–2B petitions received under the FY 2017 and FY 2018 supplemental caps requested premium processing (Form I–907) [27] 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.[28] 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 three 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.[29] 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 32,680.[30] 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 the fiscal year.[31] On March 13, 2020, then-President Trump declared a National Emergency concerning COVID–19, a communicable disease caused by the coronavirus SARS-CoV–2.[32] On April 2, 2020, DHS announced that the rule to increase the H–2B cap was on hold due to economic circumstances, and that DHS would not release additional H–2B visas until further notice.[33] DHS also noted that the Department of State had suspended routine visa services.[34]

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, 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.[35] 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. By August 13, 2021, USCIS had 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

[24] *See 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).

[25] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[26] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625. 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.

[27] Premium processing allows for expedited processing for an additional fee. *See* INA 286(u), 8 U.S.C. 1356(u).

[28] *See 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).

[29] *See* 84 FR at 20021.

[30] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625. 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.

[31] *See* DHS, *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.*

[32] *See Proclamation 9994 of Mar. 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[33] *See https://twitter.com/DHSgov/status/1245745115458568192?s=20.*

[34] *See https://twitter.com/DHSgov/status/1245745116528156673.*

[35] *See Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,* 86 FR 28198 (May 25, 2021).

rule.[36] The total number of H–2B workers approved towards the FY 2021 supplemental cap increase was 30,742.[37] This total number included approved H–2B petitions for 23,937 returning workers, as well as 6,805 beneficiaries from the Northern Central American countries.[38]

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 FY 2022 positions with start dates on or before March 31, 2022.[39] 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. USCIS data show that the total number of H–2B workers approved towards the first half FY 2022 supplemental cap increase was 17,381, including 14,150 workers under the returning worker allocation, as well as 3,231 workers approved towards the Haitian/Northern Central American allocation.[40]

Finally, DHS in consultation with DOL determined it was appropriate to increase the H–2B cap for FY 2022 positions with start dates beginning on April 1, 2022 through September 30, 2022, based on the continued demand for H–2B workers for the remainder of FY 2022, continuing economic growth, increased labor demand, and increased visa processing capacity by the Department of State. Accordingly, on May 18, 2022, DHS and DOL jointly published a temporary final rule authorizing an increase of no more than 35,000 additional H–2B visas for the second half of FY 2022.[41] As in the January 2022 TFR, the 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 35,000 additional H–2B visas under the rule applicable to the second half of FY 2022 consisted of 23,500 visas available only to H–2B returning workers from one of the last three fiscal years (FY 2019, 2020, or 2021) and 11,500 visas reserved for Salvadoran, Guatemalan, Honduran, and Haitian nationals, who were exempted from the returning worker requirement. By May 25, 2022, USCIS had received enough petitions for returning workers to reach the additional 23,500 H–2B visas made available under the second half FY 2022 H–2B supplemental visa temporary final rule.[42] USCIS data show that the total number of H–2B workers approved towards the second half FY 2022 supplemental cap increase was 43,798, including 31,480 workers under the returning worker allocation, as well as 12,318 workers approved towards the Haitian/Northern Central American allocation.[43]

Once again, DHS in consultation with DOL believes that it is appropriate to increase the H–2B cap for FY 2023 based on the demand for H–2B workers in the first half of FY 2023, anticipated demand for the second half of FY 2023, recent economic growth, and strong labor demand.[44] DHS and DOL also believe that it is appropriate and important to couple this cap increase with additional worker protections, as described below.

D. Joint Issuance of the Final Rule

As in FY 2017, FY 2018, FY 2019, FY 2021, and FY 2022, DHS and DOL (the Departments) have determined that it is appropriate to jointly issue this temporary final rule.[45] 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.[46] Although DHS and DOL each have authority to independently issue rules implementing their respective duties under the H–2B program,[47] 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).[48]

[36] *See* USCIS, *Cap Reached for Remaining H–2B Visas for Returning Workers for FY 2021, https://www.uscis.gov/news/alerts/cap-reached-for-remaining-h-2b-visas-for-returning-workers-for-fy-2021* (Aug. 19, 2021).

[37] 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. *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[38] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[39] *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,* 87 FR 4722 (Jan. 28, 2022); 87 FR 6017 (Feb. 3, 2022) (correction).

[40] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[41] *See Temporary Rule, 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,* 87 FR 30334 (May 18, 2022).

[42] *See* USCIS, *Cap Reached for Additional Returning Worker H–2B Visas for Second Half of FY 2022, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022* (May 31, 2022).

[43] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated, queried 10/2022, TRK 10710.

[44] The term "strong 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 10.7 million job openings in August 2022. See DOL, BLS, Job Openings and Labor Turnover—September, *https://www.bls.gov/news.release/archives/jolts_11012022.pdf* (last visited November 2, 2022).

[45] *See Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 82 FR 32987 (Jul. 19, 2017); *Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 83 FR 24905 (May 31, 2018); *Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 84 FR 20005 (May 8, 2019); *Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,* 86 FR 28198 (May 25, 2021); *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); *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,* 87 FR 30334 (May 18, 2022).

[46] *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).

[47] *See Outdoor Amusement Bus. Ass'n,* 983 F.3d at 684–89.

[48] *See* 8 CFR 214.2(h)(6)(iii)(A) and (C), (h)(6)(iv)(A).

III. Discussion

A. Statutory Determination

Following consultation with the Secretary of Labor, the Secretary of Homeland Security has determined that some U.S. employers cannot satisfy their needs in FY 2023 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. In accordance with the FY 2023 continuing resolution extending the authority provided in 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 FY 2023 by up to 64,716 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.[49] These businesses must retain documentation, as described below, supporting this attestation.

As in connection with the FY 2021 and FY 2022 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 during the period of temporary need. The Departments will use their discretion to select which petitions to audit, and the Departments will use the audits 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 the Departments find that an employer's documentation does not meet the irreparable harm standard, or that the employer fails to provide evidence demonstrating irreparable harm or comply with the audit process, the Departments may consider it to be a substantial violation resulting in an adverse agency action against 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 FY 2022 revealed concerns surrounding payment of the promised wage, employment of returning workers, documentation of irreparable harm, and employment at the listed location, which may warrant further review and action.

As he did in FY 2021 and in FY 2022, the Secretary of Homeland Security has also again determined, following consultation with the Secretary of Labor, 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, following consultation with the Secretary of Labor, that the supplemental visas will be limited to returning workers, with the exception that up to 20,000 of the 64,716 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.[50] DHS is reserving these 20,000 H–2B visas for nationals of El Salvador, Guatemala, and Honduras pursuant to INA section 214(a)(1), 8 U.S.C. 1184(a)(1), as well as to 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.[51] DHS is also including Haiti in this allocation to further promote and improve safety, security, and economic stability throughout the region.[52] DHS observed robust employer interest in response to the FY 2021 H–2B supplemental visa allocation for Salvadoran, Guatemalan, and Honduran nationals and the FY 2022 supplemental visa allocations for Salvadoran, Guatemalan, Honduran, and Haitian nationals, with USCIS approving petitions on behalf of 6,805 beneficiaries under the FY 2021 allocation,[53] 3,231 beneficiaries under the FY 2022 first half supplemental allocation,[54] and 12,318 beneficiaries for the second half of the fiscal year FY 2022.[55] In addition, DHS and the Biden administration have continued to conduct outreach efforts promoting the H–2B program as, among other things, a

[49] The FY 2023 Continuing resolution extending authority contained in section 204 of Division O, Title II, of the FY 2022 Omnibus, DHS, under certain circumstances and after consultation with DOL, may increase the number of H–2B visas available to U.S. employers. DHS has the authority to establish the irreparable harm standard in seeking a supplemental H–2B visa. *See, e.g.,* INA sections 103 and 214 (8 U.S.C. 1103, 1184).

[50] 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); Continuing Appropriations Act, 2023, div. A, sec. 101(6) (extending the authority provided in FY 2022 Omnibus div. O, sec. 204 (''Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the [INA] . . . .'')).

[51] *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.

[52] *See https://twitter.com/DHSgov/status/1580310211931144194?ref_src=twsrc%5Etfw* (this supplemental allocation to workers from Haiti, Honduras, Guatemala, and El Salvador ''advances the Biden Administration's pledge, under the Los Angeles Declaration to expand legal pathways as an alternative to irregular migration''); The White House, *Fact Sheet: The Los Angeles Declaration on Migration and Protection U.S, Government and Foreign Partner Deliverables, https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/fact-sheet-the-los-angeles-declaration-on-migration-and-protection-u-s-government-and-foreign-partner-deliverables/* (addressing several measures, including the H–2B allocation for nationals of Haiti, as part of ''the President's commitment to support the people of Haiti.''). We also note Congress' recent statement, in a 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* DHS, *Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs,* 86 FR 62562 (Nov. 10, 2021) (sustainable development and the stability of Haiti is vital to the interests of the United States as a close partner and neighbor).

[53] 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.

[54] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[55] *See* DHS, USCIS, Office of Performance and Quality, C3 Consolidated, queried 10/2022, TRK 10710. While USCIS approved a greater number of beneficiaries from the Northern Central American countries and Haiti than the 11,500 visas allocated under the FY 2022 second half supplemental cap for those countries, the Department of State issued approximately 7,212 visas on behalf of nationals from those countries. *See* DHS, USCIS, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625. 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 third year that DHS will make a specific allocation available for workers from the Northern Central American countries, will contribute to even greater utilization of available visas under this allocation during FY 2023.

lawful pathway for nationals of El Salvador, Guatemala, Honduras, and Haiti to work in the United States.[56] 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.[57] DHS will not accept and will reject petitions submitted for the Northern Central American and Haiti allocation with a date of need on or after April 1, 2023 that are received earlier than 15 days after the INA section 214(g) cap for the second half of FY 2023 is met or are received after the applicable numerical limitation has been reached or after September 15, 2023. Requiring petitioners to wait to submit H–2B supplemental cap petitions with start dates of need on or after April 1, 2023 is consistent with the supplemental cap authority in section 204, as extended to FY 2023 by Public Law 117–180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, and will facilitate the orderly intake and processing of supplemental cap petitions for the Northern Central American countries and Haiti. As discussed above, similar limitations apply to the intake and processing of returning worker petitions with start dates of need on or after April 1, 2023.

Similar to the previous temporary final rules for the FY 2019, FY 2021 and FY 2022 supplemental caps, the Secretary of Homeland Security has also determined to limit the supplemental visas to H–2B returning workers,[58] 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 20,000 allotment regardless of whether they are new or returning workers. If the 20,000 returning worker exemption cap for Salvadoran, Guatemalan, Honduran, and Haitian nationals is reached and visas remain available under the returning worker cap, USCIS would reject a petition seeking workers under the 20,000 allocation and return any fees submitted 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 2020, 2021, or 2022.[59] Like the temporary final rules for the first half and for the second half of FY 2022, if the 20,000 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 DHS decision not to 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 is consistent with the Biden administration's goals of providing lawful pathway for nationals of El Salvador, Guatemala, Honduras, and Haiti to temporarily work in the United States. To that end, not permitting rollover into the returning worker allocation provides employers with more time to petition for, and bring in, workers from these countries and encourages full use of the 20,000 allocation for nationals of El Salvador, Guatemala, Honduras, and Haiti to meet employer needs. This, in turn, contributes 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.

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. In recent years, 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.[60] U.S. businesses, chambers of commerce, employer organizations, and state and local elected officials have also expressed concerns in recent years to the DHS and Labor Secretaries regarding the unavailability of H–2B visas after the statutory cap was reached.[61] In addition, an employer association and a member of Congress have urged the Departments to publish one rule covering the entire fiscal year for 2023 in order to save time in the second half of the fiscal year, conserve limited agency resources, and reduce uncertainty for employers.[62]

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.[63] 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.

[56] *See, e.g.,* USAID, *Administrator Samantha Power at the Summit of the Americas Fair Recruitment and H–2 Visa Side Event, https://www.usaid.gov/news-information/speeches/jun-9-2022-administrator-samantha-power-summit-americas-fair-recruitment-and-h-2-visa* (June 9, 2022) (''Our combined efforts [with the labor ministries in Honduras and Guatemala, and the Foreign Ministry in El Salvador] . . . resulted in a record number of H–2 visas issued in 2021, including a nearly forty percent increase over the pre-pandemic levels in H–2B visas issued across all three countries.'').

[57] *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.*

[58] For purposes of this rule, these returning workers could have been H–2B cap exempt or extended H–2B status in FY 2020, 2021, or 2022. Additionally, they may have been previously counted against the annual H–2B cap of 66,000 visas during FY 2020, 2021, or 2022, or the supplemental caps in FY 2019, 2021, or 2022.

[59] The returning worker allocations are for workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. Therefore, a petitioner may choose to petition for Salvadoran, Guatemalan, Honduran, and Haitian nationals who meet this requirement under an available returning worker allocation, regardless of whether the separate allocation for nationals of the Northern Central American countries and Haiti has been reached.

[60] *See* the docket for this rulemaking for access to these letters.

[61] *See* the docket for this rulemaking for access to these letters.

[62] *See* the docket for this rulemaking for access to these letters.

[63] *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); H–2B Seasonal Worker Program Challenges Threaten Maryland's Crab Industry, Economy and Jobs (February, 2022), available at *https://governor.maryland.gov/wp-content/uploads/2022/02/2022-H-2B-Economic-Impact-Study.pdf* (last visited Oct. 2, 2022).

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, as extended by Public Law 117–180, 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 64,716 additional visas solely for the businesses facing permanent, severe financial loss or those who will face such loss in the near future.

First, DHS interprets the reference to ''the needs of American businesses'' in section 204, as extended by Public Law 117–180, 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, as extended by Public Law 117–180, 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. Accordingly, the Secretaries have determined that 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.

Second, the approach set forth in this rule, which is similar to the implementation of the supplemental caps in previous fiscal years, 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.

In sum, this rule increases the numerical limitation by up to 64,716 additional H–2B visas for the entirety of FY 2023, 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 20,000 allocation that are exempt from the returning worker limitation. This rule also distributes the supplemental visas in several allocations to assist U.S. businesses that need workers to begin work on different start dates. These provisions are each described in turn below.

B. Numerical Increase and Allocations for Fiscal Year 2023

Making the Maximum Number of Visas Available

The increase of up to 64,716 visas will help address the urgent needs of eligible employers for additional H–2B workers for those employers with employment needs in fiscal year 2023.[64] The determination to allow up to 64,716 additional H–2B visas reflects a balancing of a number of factors including: the demand for H–2B visas during the first half of FY 2023 and expected demand for the second half of FY 2023; current labor market conditions; the general trend of increased demand for H–2B visas from FY 2017 to FY 2022; H–2B returning worker data; the amount of time for employers to hire and obtain H–2B workers in this 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, as extended by Public Law 117–180, 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.[65] 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 for FY 2023, 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 is appropriate to make available up to 64,716 additional visas, which is the maximum allowed, under the FY 2023 supplemental cap authority. The Secretary further considered the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and

[64] 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.

[65] 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).

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, which includes migration by Haitian nationals. Accordingly, the Secretary determined that it is appropriate to reserve up to 20,000 of the up to 64,716 additional visas and exempt this number from the returning worker requirement for nationals of the Northern Central American countries or Haiti.

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 it would accept under the supplemental cap. Of the selected petitions, USCIS issued approvals for 15,672 beneficiaries.[66] 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 it would accept 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.[67] Of the petitions received, USCIS issued approvals for 30,742 beneficiaries, including approvals for 6,805 beneficiaries under the allocation for the nationals of the Northern Central American countries.[68]

In FY 2022, DHS made the supplemental cap available twice, once in January 2022 and again in May 2022. Under the earlier FY 2022 supplemental cap for petitions with start dates in the first half of FY 2022, USCIS had issued approvals for 17,381 beneficiaries, including approvals for 3,231 beneficiaries under the allocation for nationals of the Northern Central American countries and Haiti.[69] For the second half of FY 2022, within the first five business days of filing, USCIS received petitions for more beneficiaries than the additional 23,500 supplemental visas made available for returning workers, thus necessitating a random selection of petitions to meet the returning worker allotment.[70] Of the petitions received for the second half of FY 2022, USCIS issued approvals for 43,798 beneficiaries, including approvals for 12,318 beneficiaries under the allocation for nationals of the Northern Central American countries and Haiti.[71]

Data for the first half of FY 2023 clearly indicate an immediate need for additional supplemental H–2B visas for employers with start dates on or before March 31, 2023. USCIS received a sufficient number of H–2B petitions to reach the first half of the FY 2023 fiscal year statutory cap on September 12, 2022.[72] Further, the date on which USCIS received sufficient H–2B petitions to reach the first half semiannual statutory cap has trended earlier in recent years. In fiscal years 2017 through 2023, USCIS received a sufficient number of H–2B petitions to reach or exceed the relevant first half statutory cap on January 10, 2017, December 15, 2017, December 6, 2018, November 15, 2019, November 16, 2020, September 30, 2021, and September 12, 2022, respectively.[73]

In addition, although the public health emergency due to COVID–19 still exists,[74] DHS believes that issuing additional H–2B visas is appropriate in the context of the nation's economic recovery from the ongoing pandemic. For example, the unemployment rate declined to 3.7% in October 2022 from a pandemic high of 14.7% in April 2020.[75] 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.[76]

In fiscal year 2022, approximately 87.7 percent of H–2B filings were for positions within just 5 sectors.[77] NAICS 56 (Administrative and Support and Waste Management and Remediation Services) accounted for 40.0% of filings,

[66] 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.

[67] On June 3, 2021, 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* USCIS, *Cap Reached for Additional Returning Worker H–2B Visas for FY 2021, https://www.uscis.gov/news/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-fy-2021* (Jun. 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* USCIS, *Employers May File H–2B Petitions for Returning Workers for FY 2021, https://www.uscis.gov/news/alerts/employers-may-file-h-2b-petitions-for-returning-workers-for-fy-2021* (Jul. 23, 2021).

[68] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625. 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.

[69] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[70] *See* USCIS, *Cap Reached for Additional Returning Worker H–2B Visas for Second Half of FY 2022, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022* (May 31, 2022).

[71] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated, queried 10/2022, TRK 10710.

[72] *See* USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2023, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023* (last updated Sept. 14, 2022).

[73] *See* USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2017, https://www.uscis.gov/archive/uscis-reaches-the-h-2b-cap-for-the-first-half-of-fiscal-year-2017* (Jan. 13, 2017); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2018, https://www.uscis.gov/archive/uscis-reaches-h-2b-cap-for-first-half-of-fy-2018* (Dec. 21, 2017); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2019, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2019* (Dec. 12, 2018); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2020, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2020* (Nov. 20, 2019); 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); 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); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2023, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023* (Sept. 14, 2022).

[74] *See* HHS, *Renewal of Determination That A Public Health Emergency Exists, https://aspr.hhs.gov/legal/PHE/Pages/covid19-13Oct2022.aspx* (Oct. 13, 2022).

[75] *See* BLS Employment Situation News Release, *https://www.bls.gov/news.release/archives/empsit_11042022.htm* (November 4, 2022); BLS, *Labor Force Statistics from the Current Population Survey, https://data.bls.gov/timeseries/LNS14000000* (data extracted November 4, 2022).

[76] The April 2020 unemployment rate was 14.7%. *See https://www.bls.gov/new.release/archives/empsit_05082020.htm* (Oct. 21,2022).

[77] USCIS analysis of DOL OLFC Performance data.

NAICS 71 (Accommodation and Food Services) accounted for 11.0%, NAICS 72 (Arts, Entertainment, and Recreation) accounted for 22.0%, NAICS 23 (Construction) accounted for 12.0%, and NAICS 11 (Agriculture, Forestry, Fishing and Hunting) accounted for 2.7% of filings.

Within these industries, DOL data show higher labor demand relative to recent history. More specifically, Bureau of Labor Statistics (BLS) data from the November 1, 2022 Job Openings and Labor Turnover Survey (JOLTS) show that the rate of job openings [78] for all 5 industries was higher in September 2022 than the average over the last 36 months. In September 2022 the job opening rate for NAICS 56 [79] was 7.9 percent, which is 0.92 percentage points higher than its 3-year average of 6.98 percent, while the job opening rate for NAICS 71 was 8.4 percent which is 3.49 percentage points higher than its 3-year average of 4.91 percent. The September 2022 job opening rate for NAICS 72 was 3.60 percentage points higher than its 3-year average of 5.90 percent while the rate for NAICS 23 was 1.09 percentage points higher than its 3-year average of 4.11 percent. The job opening rate for NAICS 11 [80] was 0.43 percentage points higher than its 3-year average of 3.87 percent. For comparison, the job opening rate for all industries was 6.5 percent in September 2022.[81]

JOLTS: 36-Month Average of Job Opening Rate				
NAICS 11*	NAICS 23	NAICS 56*	NAICS 71	NAICS 72
3.87	4.11	6.98	4.91	5.90
*Supersectors are being used as a proxy, see footnotes 82 and 83.				

JOLTS: September 2022 Job Opening Rate				
NAICS 11*	NAICS 23	NAICS 56*	NAICS 71	NAICS 72
4.30	5.20	7.90	8.40	9.50
*Supersectors are being used as a proxy, see footnotes 82 and 83.				

The continued strength in the job openings rate across these industries is a clear indication of a strong 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 demand from 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 (BLS) stated that the unemployment rate decreased to 3.7% in October 2022.[82] Historically, the availability of H–2B visas addressed a need in the labor market during periods of lower unemployment. Chart 1 [83] shows that the H–2B visa allocations for Fiscal Year 2023 [84] made by this rule are slightly higher than the historical trend, but are generally consistent with what the current unemployment rate alone would predict. Additionally, when the unemployment rate is below 6%, there is greater variance in the total number of H–2B visas issued in a given year; for example, in years 2022, 2007 and 2006, when the unemployment rate ranged from approximately 3.5% to 4.6%, the total number of H–2B visas issued were comparable to what is planned for 2023. The data presented in chart 1 is meant to provide additional context and to demonstrate that the total allocation of H–2B visas is reasonable given labor market conditions.

[78] 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_11012022.pdf* (last visited November 2, 2022).

[79] 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 October 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 November 16, 2022.

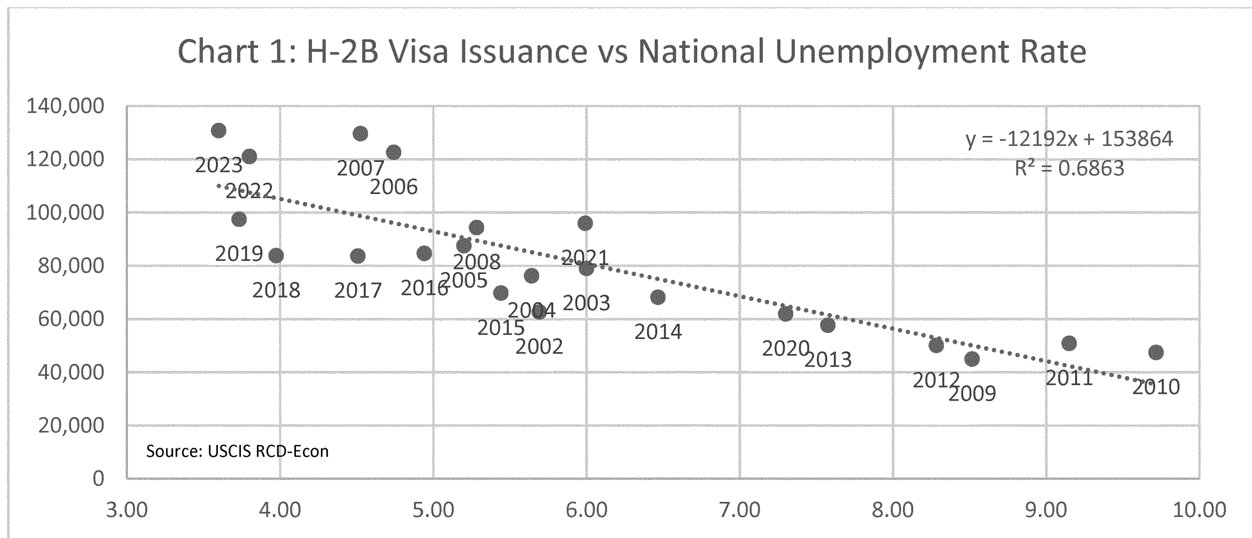
[80] JOLTS data presented here are for Mining and Logging, which is part of the Natural Resources and Mining Supersector. This supersector is comprised of NAICS 11 (Agriculture, Forestry, Fishing and Hunting) and NAICS 21 (Mining, Quarrying, and Oil and Gas Extraction). *See https://www.bls.gov/iag/tgs/iag10.htm*. 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 October 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 November 16, 2022.

[81] *See https://www.bls.gov/news.release/archives/jolts_11012022.pdf* (last visited November 2, 2022).

[82] *See* DOL, BLS, *The Employment Situation—October 2022, https://www.bls.gov/news.release/archives/empsit_11042022.pdf* (Nov. 4, 2022).

[83] 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–September 2022.

[84] Estimated visas issued for Fiscal Year 2023 is based on the sum of the fiscal year statutory cap for H–2B workers (66,000) and the supplemental allocation for this rule (64,716), for a total H–2B visa allocation of 130,716.



Given the level of demand for H–2B workers, the continued economic recovery, and continued job growth, DHS believes it is appropriate to release the maximum amount of additional visas at this time.

Making Allocations For All of FY 2023 in a Single Rule

This rule is the first time that DHS has made supplemental visas available for an entire fiscal year in a single rule. DHS believes that it is appropriate to issue a single rule for the entire fiscal year for multiple reasons.[85] First, DHS expects that there is demand for supplemental visas in the first half of FY 2023. As previously discussed, USCIS already received enough petitions to reach the congressionally mandated cap on H–2B visas for temporary nonagricultural workers for the first half of FY 2023.[86] Further, the date on which USCIS received sufficient H–2B petitions to reach the first half semiannual statutory caps has trended earlier in recent years. In fiscal years 2017 through 2023, USCIS received a sufficient number of H–2B petitions to reach or exceed the relevant first half statutory cap on January 10, 2017, December 15, 2017, December 6, 2018, November 15, 2019, November 16, 2020, September 30, 2021, and September 12, 2022, respectively.[87]

Second, based on relevant data, DHS expects that USCIS will reach the statutory cap for the second half of FY 2023 and that there will accordingly be demand for supplemental visas in the second half of FY 2023. For example, in fiscal years 2017 through 2022, USCIS received a sufficient number of H–2B petitions to reach or exceed the relevant second half statutory cap on March 13, 2017, February 27, 2018, February 19, 2019, February 18, 2020, February 12, 2021, and February 25, 2022.[88] In addition, DOL data shows consistently high demand in recent years, particularly during the second half of the fiscal year. In recent years, DOL has received an increasing number of TLC applications for an increasing number of H–2B workers with April 1 start dates: DOL received 4,500 applications on January 1, 2018, covering more than 81,600 worker positions; DOL received 5,276 applications by January 8, 2019, covering more than 96,400 worker positions; DOL received 5,677 applications during the initial three-day filing window in 2020 covering 99,362 worker positions; DOL received 5,377 applications during the initial three-day filing window in 2021 covering 96,641 worker positions; and DOL received 7,875 applications by January 7, 2022, covering 136,555 worker positions.[89]

Publishing one rule that addresses all the visas available for FY 2023 benefits the regulated public by giving more notice and certainty of what will become available for the second half. This allows businesses to better plan ahead for their seasonal workforce needs.[90]

Filing Deadline of September 15, 2023 for all Petitions

The authority to approve H–2B petitions under this FY 2023 supplemental cap expires at the end of the fiscal year, *i.e.,* the end of September 30, 2023. Therefore, DHS is requiring employers requesting any supplemental visas under this TFR, regardless of the employment start date(s), to properly file their H–2B petition with USCIS no

[85] Further, DHS believes that 64,716 is an appropriate number of supplemental visas to make available, as this rule will cover both the first and second half of FY 2023.

[86] *See* USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2023, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023#:~:text=U.S.%20Citizenship%20and%20Immigration%20Services,fiscal%20year%20(FY)%202023* (Sep. 14, 2022).

[87] *See* USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2017, https://www.uscis.gov/archive/uscis-reaches-the-h-2b-cap-for-the-first-half-of-fiscal-year-2017* (Jan. 13, 2017); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2018, https://www.uscis.gov/archive/uscis-reaches-h-2b-cap-for-first-half-of-fy-2018* (Dec. 21, 2017); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2019, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2019* (Dec. 12, 2018); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2020, https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2020* (Nov. 20, 2019); 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); 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); USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2023, https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023* (Sept. 14, 2022).

[88] *See* USCIS, *USCIS Reaches the H–2B Cap for Fiscal Year 2017, https://www.uscis.gov/archive-alerts/uscis-reaches-the-h-2b-cap-for-fiscal-year-2017* (Mar. 16, 2017); USCIS, *USCIS Completes Random Selection Process for H–2B Visa Cap for Second Half of FY 2018, https://www.uscis.gov/archive/uscis-completes-random-selection-process-for-h-2b-visa-cap-for-second-half-of-fy-2018* (Mar. 1, 2018); USCIS, *H–2B Cap Reached for FY 2019, https://www.uscis.gov/archive/h-2b-cap-reached-for-fy-2019* (Feb. 22, 2019); USCIS, *H–2B Cap Reached for Second Half of FY 2020, https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy2020* (Feb. 26, 2020); USCIS, *H–2B Cap Reached for Second Half of FY 2021, https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy-2021* (Feb. 24, 2021); USCIS, *H–2B Cap Reached for Second Half of FY 2022, https://www.uscis.gov/newsroom/alerts/h-2b-cap-reached-for-second-half-of-fy-2022* (Mar. 1, 2022).

[89] *See* DOL, *Announcements, https://www.dol.gov/agencies/eta/foreign-labor/news.*

[90] See the letter from the H–2B Workforce Coalition contained in the docket for this rulemaking.

later than September 15, 2023. USCIS will reject any cases that are received after September 15, 2023. *See* new 8 CFR 214.2(h)(6)(xiii)(C). Because DHS believes that 15 days from the end of the fiscal year is the minimum time needed for petitions to be adjudicated, DHS has set September 15, 2023 as the latest filing date to provide USCIS with adequate time for petition processing before the expiration of the authority at the end of the fiscal year, although USCIS cannot guarantee that a 15-day period will be sufficient for adjudication of petitions in all cases.

In addition, the filing deadline will be earlier than September 15, 2023 if the applicable numerical limit for the relevant supplemental visa allocation is reached before that date. *See* new 8 CFR 214.2(h)(6)(xiii)(C). In such a case, USCIS will also reject any cases that are received after the applicable numerical limitation has been reached.

Returning Worker Allocation for the First Half of FY 2023 (October 1, 2022 Through March 31, 2023)

For the first half of FY 2023, DHS will make 18,216 visas immediately available upon publication of this TFR that are limited to returning workers, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. These petitions must request a date of need starting on or before March 31, 2023. *See* new 8 CFR 214.2(h)(6)(xiii)(C).

DHS anticipates that employers will use all of the first half allocation for returning workers, given how quickly USCIS reached the FY 2023 first half statutory cap. As noted previously, USCIS received enough H–2B petitions to reach the FY 2023 first half statutory cap on September 12, 2022, which is several weeks earlier than when USCIS reached the FY 2022 first half statutory cap on September 30, 2021 [91] and is the earliest the first half cap has been reached since at least FY 2017. In addition, the relatively early publication of this rule will provide interested employers more time to prepare their petitions, increasing the likelihood that the first half allocation for returning workers will be used.[92] To the extent that the first half allocation for returning workers is used, this TFR may provide affected employers with some relief by making available a separate allocation of visas for nationals of El Salvador, Guatemala, Honduras, and Haiti, which will be available for the entirety of FY 2023.

In the event that USCIS approves insufficient petitions to use all 18,216 visas, the unused numbers will not carry over for the second half allocation because DHS believes that the operational burdens of calculating and administering a process to carry over unused visas, combined with the potential confusion for the public and adjudicators that could result from having different filing cutoff dates for the different allocations, would outweigh the benefits. In order to make any unused first half visas available for employers with second half start dates, DHS would need to set a filing cutoff date prior to September 15, 2023 for the first half allocation, upon which it would stop accepting such petitions and make a calculation of how many visas should be re-released for second half employers. Calculating visas to be re-released could also entail an additional cap allocation, additional announcements to the public, and potentially an additional lottery, all of which would significantly increase operational burdens. In addition to increasing operational burdens, DHS believes that the opening, closing, and potential re-opening of this allocation (and/or other cap allocations) could cause confusion for the public and adjudicators. Furthermore, not setting a filing cutoff date prior to September 15, 2023 will maximize employers' opportunity to avail themselves of the first half allocation. While DHS acknowledges that this approach could potentially result in some employers with a demonstrated business need in the second half of the fiscal year losing the opportunity to receive a supplemental visa, it is DHS's expectation that there will be sufficient demand from employers with first half start dates to use the entire allocation.

Initial Returning Worker Allocation for the Early Second Half (April 1, 2023, Through May 14, 2023)

For the second half of FY 2023, DHS will initially make available 16,500 visas limited to returning workers, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. These petitions must request a date of need starting on or after April 1, 2023, through and including May 14, 2023. Limiting this allocation to employers with employment start dates on or before May 14, 2023 reflects DHS's intentions to give employers with needs later in the season a better opportunity to access the H–2B program, and to prevent employers from petitioning under both of the second-half allocations to fill the same need.

To mitigate complications from concurrent administration of the statutory second half cap, these petitions must be filed no earlier than 15 days after the second half statutory cap is reached, a date that USCIS will identify in a public announcement.[93] When USCIS announces that it has received a sufficient number of petitions to reach the second half statutory cap, it will also announce the earliest possible filing date (15 days after the second half statutory cap) for this allocation. Concurrent administration of the second half statutory cap with the second half supplemental cap would pose significant operational challenges, particularly considering the volume of H–2B petitions USCIS would have to process at the same time. A cushion of 15 days after the second half statutory cap is reached should provide USCIS with sufficient time to process H–2B petitions filed under the second half statutory cap and prepare to process petitions under this supplemental cap, and should also provide petitioners not selected under the statutory cap with enough time to refile under this supplemental cap. Furthermore, making this allocation available *after* the second half statutory cap has been reached builds in flexibility to account for variations in the timing of that cap being reached. DHS cannot predict with certainty when the FY 2023 second half statutory cap will be reached (or if it will be reached), and therefore, did not specify a date for when to first allow petitioners to file for FY 2023 second half supplemental visas. In the event that the statutory second half FY 2023 cap is not reached, the supplemental allocation for returning workers for the second half of FY 2023 will not become available.

Based on historical data showing increasingly high demand for H–2B workers with April 1 start dates, DHS expects all 16,500 visas to be used quickly once the supplemental allocation becomes available. However, in the event that USCIS approves insufficient petitions to use all 16,500

[91] *See https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022* (Oct 12, 2021); *https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023* (Sept. 14, 2022).

[92] Compare the publication date of this rule with January 28, 2022, the date the temporary final rule increasing the supplemental cap for the first half of FY2022 was first published.

[93] Pursuant to new 8 CFR 214.2(h)(6)(xiii)(C)(*2*), USCIS will reject petitions filed pursuant to paragraph (h)(6)(xii)(A)(*1*)(*b*) of this section requesting employment start dates from April 1, 2023 to May 14, 2023 that are received earlier than 15 days after the INA section 214(g) cap for the second half FY 2023 has been met.

visas, the unused numbers will not carry over for petition approvals for employment start dates beginning on or after May 15, 2023. DHS chose to limit these 16,500 visas to start dates on or before May 14, 2023, without the ability for these visas to be carried over into the next allocation. As previously stated, DHS believes that the operational burdens of calculating and administering a process to carry over unused visas, combined with the potential confusion for the public and adjudicators that could result from having different filing cutoff dates for the different allocations, would outweigh the benefits. In order to make any unused visas from this allocation available for late second half of FY 2023 petitions, DHS would need to set a filing cutoff date that would be after the cutoff for the first half allocation but prior to any cutoff for late second half of FY 2023 petitions and prior to September 15, 2023, upon which it would stop accepting petitions and make a calculation of how many visas should be re-released for late second half employers. Calculating visas to be re-released could also entail an additional cap allocation, additional announcements to the public, and potentially an additional lottery, all of which would significantly increase operational burdens. In addition to increasing operational burdens, DHS believes that the opening, closing, and potential re-opening of this allocation (and/or other cap allocations) could cause confusion for the public and adjudicators. Furthermore, not setting a filing cutoff date prior to September 15, 2023 will maximize employers' opportunity to avail themselves of the early second half allocation. While DHS acknowledges that this approach could result in employers in the late second half losing the opportunity to receive a supplemental visa, it is DHS's expectation that there will be sufficient demand from employers to use this entire allocation.

Additional Returning Worker Allocation for the Late Second Half (On or After May 15, 2023, Through September 30, 2023)

For the late second half of FY 2023, DHS will make available an additional allocation of 10,000 visas limited to returning workers, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. To assist employers needing workers to begin work during the late spring and summer seasons in the fiscal year (also referred to as ''late season employers''), these petitions must request a date of need starting on or after May 15, 2023. These petitions must be filed no sooner than 45 days after the second half statutory cap is reached, a date that USCIS will identify in a public announcement.[94] When USCIS announces that it has received a sufficient number of petitions to reach the second half statutory cap, it will also announce the earliest possible filing date (45 days after the second half statutory cap) for this allocation. The cushion of 45 days after the second half statutory cap is reached is intended to provide USCIS with sufficient time to process H–2B petitions filed under the second half statutory cap that remain pending, as well as to process the expected influx of petitions under the early second half supplemental cap that will begin 15 days after the second half statutory cap is reached.[95] By allowing USCIS to manage its workload in this way, the 45-day period will help USCIS prepare to process petitions under the late second half supplemental cap and to mitigate the complications from concurrent administration of these various caps.

This is the first supplemental cap reserved for late season employers that need workers to begin work during the late spring and summer seasons in the fiscal year. By regulation, employers may only apply for a TLC 75 to 90 days before the start date of need,[96] and, as such, employers needing workers to begin work on or after May 15 are not eligible to file TLC applications until on or after February 15. In past years, because of this requirement and the strong demand for H–2B workers in recent years to begin work on the earliest employment start date (*i.e.,* April 1), late season employers were unable to receive cap-subject H–2B workers because they did not have an opportunity to file visa petitions for cap-subject H–2B workers before the second semiannual statutory cap was reached. Since, based on recent years' data,[97] USCIS has typically received sufficient H–2B petitions to meet the statutory cap for the second half of the fiscal year around mid-February, many of these late season employers may have decided to not file a TLC application. Therefore, DHS, in consultation with DOL, has determined that it is appropriate to make a separate allocation available for late season employers whose late season labor needs may have put them at a disadvantage in accessing H–2B workers in recent years. DHS, in consultation DOL, has determined that authorizing two allocations for the second half of FY 2023 based on an employer's start date of need, in addition to requiring that the employer's start date of need on the Form I–129 match the start date of need on the approved TLC,[98] will provide employers with late season needs a better opportunity to receive H–2B workers to avoid irreparable harm. Specifically, employers with early season needs that need work to begin on or after April 1 will have the opportunity to file H–2B petitions under both the statutory cap and the first allocation of the supplemental cap, while employers with late season needs do not have that opportunity.

A review of TLC requests for employment start dates on or after May 15 through September 30 of FY 2016, which was the last year in which Congress enacted the returning worker exemption, indicates that OFLC received approximately 892 applications from late season employers requesting TLCs for more than 17,650 H–2B positions and, of this, certified approximately 13,200 H–2B positions. However, for the last six fiscal years, Congress has not enacted a returning worker exemption, and the statutory second half semiannual visa allocation was reached months in advance of May. Accordingly, this has given rise to the concern that the intense competition for H–2B visas among employers requesting TLCs for the earliest possible employment start date of April 1 has resulted in the semiannual allocation of H–2B visas being effectively unavailable for many employers who need workers to start late in the season.

To mitigate complications from concurrent administration of the additional returning worker allocation for the second half of the fiscal year for late season employers and either the statutory second half cap or the initial supplemental allocation for returning

[94] Pursuant to new 8 CFR 214.2(h)(6)(xiii)(C)(*3*), USCIS will reject petitions filed pursuant to paragraph (h)(6)(xii)(A)(*1*)(*c*) of this section requesting employment start dates from May 15, 2023 to September 30, 2023, that are received earlier than 45 days after the INA section 214(g) cap for the second half FY 2023 has been met.

[95] While petitioners may continue to submit petitions under the early second half supplemental cap through September 15, DHS expects the heaviest filing to occur soon after the visas become available. This expectation is based on historical filing patterns, as well as an assumption that employers will try act quickly to secure workers consistent with their dates of need.

[96] *See* 20 CFR 655.15(b).

[97] As noted above, in fiscal years 2017 through 2022, USCIS received a sufficient number of H–2B petitions to reach or exceed the relevant second half statutory cap on March 13, 2017, February 27, 2018, February 19, 2019, February 18, 2020, February 12, 2021, and February 25, 2022, respectively.

[98] *See* 8 CFR 214.2(h)(6)(iv)(D) (''an H–2B petition must state an employment start date that is the same as the date of need stated on the approved temporary labor certification'').

workers for the second half of the fiscal year (or both), these petitions must be filed no earlier than 45 days after the second half statutory cap is reached. When USCIS announces that it has received a sufficient number of petitions to reach the second half statutory cap, it will also announce the earliest possible filing date (45 days after the second half statutory cap) for this allocation. In the event that the statutory second half FY 2023 cap is not reached, this supplemental allocation for late season filers workers will not become available. Furthermore, in the event that USCIS does not approve sufficient petitions to use all 10,000 visas for late season employers, DHS will not carry over the unused numbers for petition approvals for any other allocation. For example, any unused numbers would not carry over to petitions for workers from El Salvador, Guatemala, Honduras, or Haiti. As noted above, DHS believes the operational burdens of calculating and administering a process to carry over unused visas would outweigh the benefits because of the potential confusion for the public and adjudicators that could result from having different filing cutoff dates for the different allocations. A process to carry over unused visas could also entail an additional cap allocation, additional announcements to the public, and potentially an additional lottery, all of which significantly increase operational burdens and may add further confusion to the public and adjudicators.

Allocation for Nationals of El Salvador, Guatemala, Honduras, and Haiti

DHS will make available 20,000 additional visas that are 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). These 20,000 visas will be available for petitioners requesting an employment start date before the end of FY 2023, up to and including September 30, 2023.

While prior years' allocations for nationals of the Northern Central American countries and Haiti have not been reached, DHS anticipates a higher likelihood that the 20,000 visas allocated for these nationals by this rule will be reached by the end of this fiscal year. As discussed above, DHS observed robust employer interest in response to the FY 2021 H–2B supplemental visa allocation for Salvadoran, Guatemalan, and Honduran nationals and the FY 2022 supplemental visa allocations for Salvadoran, Guatemalan, Honduran, and Haitian nationals, and the data show a trend of increased participation by Haitian, Salvadoran, Guatemalan, and Honduran workers in the H–2B program.[99] Furthermore, the publication of this rule relatively early in the fiscal year, and the availability of this allocation for the entirety of FY 2023, also increase the likelihood that the 20,000 visas will be used.

Employers requesting workers from one of the Northern Central American countries or Haiti with an employment start date in the first half of FY 2023 may file their petitions immediately after the publication of this TFR. Employers requesting workers from one of the Northern Central American countries or Haiti with an employment start date in the second half of FY 2023 must file their petitions no earlier than 15 days after the second half statutory cap is reached. The requirement to file the petition no earlier than 15 days after the second half statutory cap is reached is consistent with the approach taken for the initial returning worker allocation for the early second half of the fiscal year, and is in line with the Departments' interpretation of their authority to make available supplemental (or in other words, additional) visas as contingent upon the exhaustion of visas under the statutory cap.[100]

The Departments have decided not to further divide the 20,000 visas for workers from one of the Northern Central American countries or Haiti into separate allocations for the first and second half of the fiscal year. The Departments intend for this additional flexibility of allowing any employment start date within FY 2023 to encourage U.S. employers that are suffering irreparable harm or will suffer impending irreparable harm to seek out workers from such countries, and, 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. While this approach could potentially result in employers with start dates in the first half of FY 2023 using all 20,000 visas for nationals of the Northern Central American countries and Haiti, and consequently, employers with start dates in the second half of FY 2023 losing the opportunity to utilize this particular allocation, DHS believes that the benefits of increasing the flexibility of this allocation outweighs the potential risk. Moreover, employers with start dates in the second half of FY 2023 seeking to employ nationals of the Northern Central American countries and Haiti may request a visa under one of the two second half supplemental allocations which are available for returning workers regardless of country of nationality.

In the event that USCIS does not approve sufficient petitions to use all 20,000 visas limited to nationals of the Northern Central American countries and Haiti by the end of FY 2023, DHS will not carry over the unused numbers for petition approvals for any other allocation. For example, any unused numbers would not carry over to petitions for returning workers with employment start dates in the second half of FY 2023. As noted above, DHS believes the operational burdens of calculating and administering a process to carry over unused visas would outweigh the benefits because of the potential confusion for the public and adjudicators that could result from having different filing cutoff dates for the different allocations. A process to carry over unused visas could also entail an additional cap allocation, additional announcements to the public, and potentially an additional lottery, all of which significantly increase operational burdens and may add further confusion to the public and adjudicators. Further, this single filing cutoff approach provides employers with incentive and more time to petition for, and bring in, workers from El Salvador, Guatemala, Honduras, and Haiti to meet employer needs, consistent with the Biden administration's efforts and outreach to promote and improve safety, security, and economic stability in these countries.

Process if Cap Allocations Are Reached

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 September 15, 2023. Specifically, the following scenarios may still occur:

- The 18,216 supplemental cap visas limited to returning workers that will be

[99] As previously noted, USCIS approved petitions on behalf of 6,805 beneficiaries under the FY 2021 allocation, 3,231 beneficiaries under the FY 2022 first half supplemental allocation, and 12,318 beneficiaries for the second half of the fiscal year FY 2022. *See* DHS, USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, VIBE, DOS Visa Issuance Data queried 11.2021, TRK 8598; DHS, USCIS, Office of Performance and Quality, C3 Consolidated, queried 10/2022, TRK 10710; DHS, USCIS, Office of Performance and Quality, CLAIMS3, VIBE, DOS Visa Issuance Data queried 10/2022, TRK 10625.

[100] Pursuant to new 8 CFR 214.2(h)(6)(xiii)(C)(*4*), USCIS will reject petitions filed pursuant to paragraph (h)(6)(xii)(A)(*2*) of this section that have a date of need on or after April 1, 2023 and are received earlier than 15 days after the INA section 214(g) cap for the second half of FY 2023 is met.

immediately available for employers with dates of need on or after October 1, 2022, through March 31, 2023, will be reached before September 15, 2023;

- The 16,500 supplemental cap visas limited to returning workers that will be available for employers with dates of need starting on or after April 1, 2023, through May 14, 2023, will be reached before September 15, 2023;
- The 10,000 supplemental cap visas limited to returning workers that will be available for late season employers with dates of need on or after May 15, 2023, through September 30, 2023, will be reached before September 15, 2023; or
- The 20,000 supplemental cap visas limited to nationals of the Northern Central American countries and Haiti will be reached before September 15, 2023.

Under this rule, new 8 CFR 214.2(h)(6)(xiii)(D) reaffirms the existing 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,[101] 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 18,216 supplemental cap visas limited to returning workers that will be immediately available for employers with dates of need on or after October 1, 2022, through March 31, 2023, is reached before September 15, 2023; the 16,500 supplemental cap visas limited to returning workers that will be available for employers with dates of need on or after April 1, 2023, through May 14, 2023, is reached before September 15, 2023; the 10,000 supplemental cap visas limited to returning workers that will be available for late season employers with dates of need on or after May 15, 2023, through September 30, 2023, is reached before September 15, 2023; or the 20,000 visas limited to nationals of the Northern Central American countries and Haiti is reached before September 15, 2023. Similar to the processes applicable to the H–2B semiannual 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

As noted above, to address the increased and, in some cases, impending need for H–2B workers in this fiscal year, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has determined that employers may petition for supplemental visas on behalf of up to 44,716 workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2020, 2021, or 2022. This temporal limitation mirrors the prior fiscal year's temporal limitation in the returning worker definition[102] and the temporal limitation Congress imposed in previous returning worker statutes.[103] 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) may obtain their new visas through DOS and begin work more expeditiously because they have previously obtained H–2B visas and therefore have been vetted by DOS and would have departed the United States as generally required by the terms of their nonimmigrant admission.[104] 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 renewing visas in the same classification within 48 months of the prior visa's expiration, who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h).[105] 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.

To ensure compliance with the requirement that additional visas only be made available to returning workers, DHS will require petitioners seeking H–2B workers under the supplemental cap to attest that each employee requested or instructed to apply for a visa under the FY 2023 supplemental cap was issued an H–2B visa or otherwise granted H–2B status in FY 2020, 2021, or 2022, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti and is counted towards the 20,000 cap. This

[101] *See* 8 CFR 214.2(h)(8)(vii).

[102] *See, e.g.,* 87 FR 30334 (defining ''returning workers'' as ''those who were issued H–2B visas or held H–2B status in fiscal years 2019, 2020, or 2021'').

[103] *See* INA section 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A); 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.

[104] 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.

[105] The interview waiver authority for certain H–2B applicants renewing visas in the same classification within 48 months of the prior visa's expiration has no sunset date. Currently, certain first-time H–2B visa applicants or certain H–2B visa applicants previously issued any type of visa within the last 48 months may be eligible for an interview waiver; however, the authority for these interview waivers are set to expire on December 31, 2022. *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); 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).

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 20,000 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.

With respect to satisfying the returning worker requirement, employers must maintain 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 2020, 2021, or 2022, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti counted towards the 20,000 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 2020, 2021, or 2022.

D. Returning Worker Exemption for up to 20,000 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 20,000 additional H–2B visas will be limited to workers who are nationals of one of the Northern Central American countries or Haiti. These 20,000 visas will be exempt from the returning worker requirement. Because the returning worker allocations have no restrictions related to a worker's country of nationality, if the 20,000 visa limit has been reached and the 44,716 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 2020, 2021, or 2022.

While DHS reiterates the benefits of allocating visas under the supplemental cap to returning workers, the Secretary of Homeland Security has determined that the 20,000 limitation and exemption from the returning worker requirement for nationals of the Northern Central American countries or Haiti is beneficial for several reasons. First, 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. The Secretary has determined that both the 20,000 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. Further, E.O. 14010 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.[106] 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.[107] DHS believes that including nationals of Haiti in this allocation of up to 20,000 supplemental visas will further promote and improve safety, security, and economic stability throughout this region.[108]

Additionally, DOS will work with the relevant countries to facilitate consular interviews, if required,[109] and channels for reporting incidents of fraud and abuse within the H–2 programs. Further, each country's own consular networks will maintain contact with the workers while in the United States and ensure the workers know their rights and responsibilities under the U.S. immigration laws, which are all valuable protections to the immigration system, U.S. employers, U.S. workers, and workers entering the country on H–2 visas. DHS has determined that reserving 20,000 supplemental H–2B visas for nationals of the Northern Central American countries or Haiti is a reasonable allocation given the progressively increasing use of H–2B visas among this population in recent years, as noted above. Additionally, with the option to apply for visas in this category for the entire fiscal year, rather than dividing the allocation in two halves, there will be more time to reach the increased allocation. DHS believes these aspects 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

[106] *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).

[107] *See, e.g.,* USAID, *Administrator Samantha Power at the Summit of the Americas Fair Recruitment and H–2 Visa Side Event, https://www.usaid.gov/news-information/speeches/jun-9-2022-administrator-samantha-power-summit-americas-fair-recruitment-and-h-2-visa* (Jun. 9, 2022) (''Our combined efforts [with the labor ministries in Honduras and Guatemala, and the Foreign Ministry in El Salvador] . . . resulted in a record number of H–2 visas issued in 2021, including a nearly forty percent increase over the pre-pandemic levels in H–2B visas issued across all three countries.'').

[108] *See, e.g., https://twitter.com/DHSgov/status/1580310211931144194?ref_src=twsrc%5Etfw* (this supplemental allocation to workers from Haiti, Honduras, Guatemala, and El Salvador ''advances the Biden Administration's pledge, under the Los Angeles Declaration to expand legal pathways as an alternative to irregular migration''); The White House, *Fact Sheet: The Los Angeles Declaration on Migration and Protection U.S, Government and Foreign Partner Deliverables, https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/fact-sheet-the-los-angeles-declaration-on-migration-and-protection-u-s-government-and-foreign-partner-deliverables/* (addressing several measures, including the H–2B allocation for nationals of Haiti, as part of ''the President's commitment to support the people of Haiti'').

[109] As noted previously, consular officers 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 expanded 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).

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. Collaborating closely with the governments of El Salvador, Guatemala, and Honduras, USAID has strengthened the capacity of relevant government ministries to transparently and efficiently match qualified workers to temporary labor opportunities in the United States. In Fiscal Years 2021 and 2022, USAID increased funding to expand capacity building activities in El Salvador, Guatemala, and Honduras in response to the increased demand generated by the supplemental allocations of H–2B visas for Northern Central American nationals included in the FY 2021 and FY 2022 TFRs. The acceleration of USAID's activities likely helped increase uptake of H–2B visas issuance under the FY 2021 and FY 2022 TFRs, as H–2B visa issuances to Salvadorans, Guatemalans and Hondurans increased significantly over prior years, [110] 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— from 42 days to 14 days in El Salvador, 55 days to 20 days in Guatemala, and 24 days to 8 days in Honduras.[111] 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.[112] In FY 2021, the first year in which supplemental H–2B visas were reserved for nationals of Northern Central American countries, DOS issued a combined total of 6,277 H–2B visas to nationals of those countries.[113] In FY 2022, DOS issued a combined total of 15,058 H–2B visas to nationals of Haiti and the Northern Central American countries.[114] This increase is likely due in part to the additional H–2B visas made available to nationals of these countries by the FY 2021 and FY 2022 H–2B supplemental visa temporary final rules. 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.[115] Therefore, as previously stated, DHS has determined that the additional increase in FY 2023 will not only provide U.S. businesses that 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.

The exemption from the returning worker requirement recognizes the small, albeit increasing, number of individuals from the three Northern Central American countries and Haiti who were previously granted H–2B visas in recent years. Absent this exemption, there may be an insufficient number of qualifying workers from these countries to use the allocated visas. Exempting this population from the returning worker requirement will increase the ability of workers from these countries to pursue lawful temporary work in the U.S., encourage employers to seek out individuals from these countries, and maximize the chance of meeting the goal of reaching the full allocation.

USCIS will stop accepting petitions received under the allocation for the Northern Central American countries and Haiti after September 15, 2023. 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. 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 2023 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. 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. In addition, under this rule, the petitioner must submit an attestation to USCIS in which the petitioner affirms, under penalty of perjury, that it meets the business need standard—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.[116] In addition to asserting that it meets the business need standard, the employer must attest that, by the time of submission of the petition to USCIS, they have prepared and retained a detailed written statement describing how the evidence gathered in support of their application demonstrates that irreparable harm is occurring or

[110] *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 Oct. 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 Oct. 15, 2022).

[111] *See* USAID, *Additional H–2B Visa Allocations for Northern Central America and Haiti to Address Irregular Migration, https://www.usaid.gov/news-information/press-releases/oct-12-2022-additional-h-2b-visa-allocations-northern-central-america-and-haiti#:~:text=Collaborating%20closely%20with,eight%20in%20Honduras* (Oct. 12, 2022).

[112] The ''combined total'' includes all H–2B visas and are not limited to visas issued under supplemental caps. *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); DOS, *Monthly Nonimmigrant Visa Issuance Statistics, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visastatistics/monthly-nonimmigrant-visaissuances.html* (last visited Mar. 15, 2022).

[113] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated, DOS Issuance Data, queried 10/2022, TRK 10698.

[114] *See* Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Performance and Quality, C3 Consolidated, DOS Issuance Data, queried 10/2022, TRK 10698.

[115] *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).

[116] 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.''

impending. The employer must also attest that, upon request, it will provide to DHS and/or DOL all documentary evidence that supports its claim of irreparable harm, along with the detailed written statement it prepared by the time of submitting the petition to USCIS, describing how such evidence demonstrates irreparable harm. The petitioner must submit the attestation directly to USCIS, together with Form I–129, the approved and valid TLC,[117] and any other necessary documentation. As in the rules implementing the FY 2017, FY 2018, FY 2019, FY 2021, and the 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.*[118]

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 temporary final rule for the first half of FY 2022, 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. The Departments applied this standard again in the temporary final rule for the second half of FY 2022. The Departments are also applying this standard to the instant temporary final rule, and are again requiring employers 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.[119] The irreparable harm standard in this rule aligns with this 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 the need set forth in this rule 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.

In contrast to previous rules, this rule also requires an employer to attest that it has prepared a detailed written statement describing (i) how the employer's business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all H–2B workers requested on the I–129 petition, and (ii) how each type of evidence relied upon by the employer demonstrates the applicable irreparable harm. The employer will not submit this detailed written statement to DHS with its petition for supplemental visas, but will attest on the attestation form to having prepared a detailed written statement. The detailed written statement must be provided to DHS and/or DOL upon request in the event of an audit or during the course of an investigation.

This requirement is informed by the Departments' experiences in assessing the irreparable harm standard in previous years. When conducting an audit or investigation under the previous temporary final rules, DOL has discovered that some employers are unfamiliar with the irreparable harm standard and recordkeeping requirements, despite their signed attestation. DOL has found that employers either cannot describe or explain their irreparable harm (whether it occurred or was impending at the time of signing the attestation form), or state that irreparable harm neither occurred nor was impending because the employer ultimately was able to employ H–2B workers. The latter response reflects a misunderstanding of the current irreparable harm standard, because irreparable harm must have been occurring or impending at the time the employer petitioned for supplemental visas. The attestation that irreparable harm is occurring or is impending cannot be based on a speculative analysis that permanent or severe financial loss ''may occur'' or ''is likely to occur.'' Rather, as of the time of submission to DHS, employers must have concrete evidence establishing that severe and permanent financial loss is occurring, with the scope and severity of harm clearly articulable, or that severe and permanent financial loss will occur in the near future without access to the supplemental visas. Even if no irreparable harm ultimately occurs because the employer is approved for supplemental visas under this rule, the employer must be able to articulate how permanent and severe financial loss was

[117] 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).

[118] 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 2023 (33,000). Further, the attestation requirement does not apply to noncitizens who are exempt from the fiscal year 2023 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.

[119] *See* section 204 of Pulic aw. 117–103, as extended by Public Law 117–180.

impending at the time of filing. Additionally, in DOL's experience, employers sometimes do not retain the documentation they specifically attested they would retain, or will not or cannot explain how this documentation demonstrates the relevant irreparable harm to which they attested, which indicates that some of the employers seeking to benefit from hiring H–2B workers are not thoughtfully considering, or considering at all, whether their business needs qualify them for supplemental H–2B visas under these rules.

Additionally, the Departments believe that the written statement is necessary in the case of an audit or investigation to explain, in detail, the employer's reasoning as to why irreparable harm was occurring or impending without the ability to employ H–2B workers, and how the evidence supports the employer's reasoning. In audits and investigations, some employers have provided hundreds of pages of evidence without any explanation as to how this evidence demonstrates irreparable harm, leaving DOL or DHS to determine how a voluminous compilation of complex and seemingly unrelated documents demonstrates irreparable harm without any understanding of the employer's intent when providing the documents. A detailed, thoughtful explanation from the employer will clarify the purpose of these documents and allow the employer to clearly make their case that the business was experiencing irreparable harm or would experience impending irreparable harm at the time of petitioning for supplemental visas.

As such, the Departments believe that it is prudent to require employers to identify how they are suffering irreparable harm (that is, permanent or severe financial loss), or will suffer impending irreparable harm, and how the evidence they will maintain shows that harm was occurring or impending, at the time they petition for H–2B visas under this rule. The written statement should identify, in detail, the severe and permanent financial loss that is occurring or will occur in the near future without access to the supplemental visas, and should describe how the information contained in the documentary evidence demonstrates this severe and permanent financial loss. A written statement explaining that no irreparable harm occurred because the employer was approved for supplemental H–2B visas is insufficient; if no irreparable harm actually occurred, the employer must be able to show that irreparable harm was impending at the time of the petition's filing. Supporting evidence of the employer's irreparable harm (either occurring or impending) maintained and discussed in the detailed written statement 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 2020, 2021, and 2022) 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.

These examples are not exhaustive, nor will they necessarily establish that the business meets the irreparable harm standard; petitioners may retain other types of evidence they believe will satisfy these standards. Such evidence must be maintained and provided, with the written statement, to DOL or DHS upon request.

While the employer will not submit the detailed written statement nor the supporting evidence to DHS at the time of filing a petition for H–2B visas under this rule, the Departments emphasize that the employer must prepare the detailed written statement and compile the evidence at the time of filing. The employer must complete the analysis as to whether the employer is experiencing irreparable harm or will experience impending irreparable harm at the time the employer petitions for supplemental visas using evidence available at this time. In the interest of efficiency, the Departments do not require the submission of this statement to DHS at the time of filing the petition. Instead, the employer must attest that it has prepared the detailed written statement.

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. USCIS may reject in accordance with 8 CFR 103.2(a)(7)(ii) or deny in accordance with 8 CFR 103.2(b)(8)(ii), as applicable, any petition requesting H–2B workers under this FY 2023 supplemental cap that is lacking the requisite attestation form. Although this regulation does not require submission of evidence and/or a detailed written statement at the time of filing of the petition, other than an attestation, the employer must have such evidence and the accompanying detailed written statement on hand and ready to present to DHS or DOL at any time starting with the date of filing the I–129 petition, through the prescribed document retention period discussed below.

As with petitions filed under the FY 2021 and 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. The Departments may consider failure to provide evidence demonstrating irreparable harm, to prepare or provide the detailed written statement explaining irreparable harm, or to comply with the audit process to be a substantial violation resulting in an adverse agency action on the employer, including assessment of a civil money penalty, 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)(xiii)(B)(*2*)(*vi*) and (*vii*) 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:

(1) 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 20,000 visas reserved for such workers;

(2) 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);

(3) will conduct additional recruitment of U.S. workers in accordance with the requirements of this rule and discussed further below; and

(4) will document and retain evidence of such compliance.

Because petitioners will submit the attestation 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, USCIS may deny or revoke, as applicable, a petition based on or related to statements made in the attestation, including but not limited to the following grounds: (1) the employer failed to demonstrate employment of all of the requested workers is necessary under the appropriate business need standard; or (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. The petitioner may appeal any denial or revocation on such basis, however, 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 to applying the eligibility requirements of this rule without causing undue delays in the filing or adjudication processes for those employers with start dates in the first half of the fiscal year, many of whom will have already begun or completed the TLC application process. The Departments have determined that, if such employers were required to submit the attestation form to DOL before filing a petition with DHS, the attendant delays would negatively impact the ability of American businesses to timely get the help that they need given TLC processing timeframes. For consistency and to avoid confusion, the Departments will also maintain the post-TLC attestation process for employers with start dates in the second half of the fiscal year that seek supplemental H–2B visas under this rule. This approach, in conjunction with additional integrity safeguards, has been used consistently in prior supplemental H–2B temporary final rules, and the Departments will continue to monitor its effectiveness and sufficiency. As in prior years, all employers under this rule are required to retain documentation, which the employer must provide 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 20,000 (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 655.67. Although the employer must have such documentation on hand at the time it files the petition, the Departments do not believe it is necessary or efficient for all employers to submit such documentation to USCIS at the time of filing the petition. 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 that they meet the document retention requirements at new 20 CFR 655.67, petitioners 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 is occurring or will occur and document the form of such harm. Examples of possible types of evidence to be maintained are listed earlier in this section.

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 20,000 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 the petitioner 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 one year or more than five 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.[120]

[120] Pursuant to the statutory provisions governing enforcement of the H–2B program, INA section

Continued

Evidence reflecting a preference for hiring H–2B workers over U.S. workers may warrant 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. *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 Oct. 25, 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 Oct. 25, 2022).[121]

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, as extended by Public Law 117–180, 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, as extended by Public Law 117–180, 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.[122] Thus, if the attestation requirement or any other part of this rule is enjoined or held invalid, the Departments intend for the remainder of the rule, with the exception of the retention requirements being codified in new 20 CFR 655.67, 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 timely, non-frivolous H–2B petition requesting an extension of stay received on or after January 25, 2023, but no later than 1 year after that date.[123] In addition, such workers must have been lawfully admitted to the United States and have not worked without authorization subsequent to such lawful admission. 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 January 25, 2023 without waiting for approval of the H–2B petition. To be eligible for portability, employers must have received an approved TLC demonstrating that they have completed a test of the U.S. labor market, and that DOL determined that there were no qualified U.S. workers available to fill these temporary positions. DHS is making this portability available for an additional one-year period in order to provide greater certainty for H–2B employers and workers, as well as to provide stability for H–2B employers amidst continuing uncertainties surrounding the COVID–19 pandemic including possible future impacts of COVID–19 variants.[124]

The portability provision at new 8 CFR 214.2(h)(29)(iii)(A)(*1*)–(*2*) is substantively the same as the portability provision offered in the prior second half FY 2022 H–2B supplemental visa temporary final rule, which was codified at 8 CFR 214.2(h)(28)(iii)(A)(*1*)–(*2*), and will begin upon the expiration of that provision. *See* new 8 CFR 214.2(h)(29)(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.[125]

The employment authorization provided under this provision would end 15 days after USCIS denies the H–2B petition or such petition is withdrawn. During the entire period of

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.

[121] 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 can be accessed at *https://www.dhs.gov/policy*.

[122] 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.

[123] 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)(29).

[124] *See* Carolyn Y. Johnson, *XBB, BQ.1.1, BA.2.75.2—a variant swarm could fuel a winter surge,* Washington Post, *https://www.washingtonpost.com/health/2022/10/18/covid-variants-xbb-bq1-bq11/* (Oct. 18, 2022). *See also,* CDC, *Variants of the Virus, https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html* (last updated Aug. 11, 2021); CDC, *Frequently Asked Questions About COVID–19 Vaccination, https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html* (last updated Oct. 13, 2022).

[125] *See Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers* 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. *Temporary Changes to Requirements Affecting H–2B Nonimmigrants Due to the COVID–19 National Emergency,* 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. *Temporary Changes to Requirements Affecting H–2A Nonimmigrants Due to the COVID–19 National Emergency,* 85 FR 21739 (April 20, 2020). 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. *Temporary Changes to Requirements Affecting H–2A Nonimmigrants Due To the COVID–19 National Emergency: Partial Extension of Certain Flexibilities,* 85 FR 51304 (August 20, 2020) and *Temporary Changes to Requirements Affecting H–2A Nonimmigrants due to the COVID–19 National Emergency: Extension of Certain Flexibilities,* 85 FR 82291 (December 18, 2020).

the employment authorization, including this 15-day period, the new employer is obligated to comply with all applicable labor laws and regulations. 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 the 15-day period of employment following petition denial under existing DHS regulations at 8 CFR 274a.12(b)(21) for certain E-Verify participants to employ H–2A workers. As in the prior temporary final rules, the 15-day period is intended to account for the passage of time between USCIS denial of the H–2B petition and the petitioner receiving notice of such denial, but the Departments will continue to assess the necessity and effectiveness of this grace period.[126]

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).[127] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed ten 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, on January 14, 2022, on July 15, 2022, and most recently on October 13, 2022.[128] 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.[129] 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.[130] As of October 4, 2022, there have been over 615 million confirmed cases of COVID–19 identified globally, resulting in more than 6.5 million deaths.[131] Approximately 95,112,569 cases have been identified in the United States, with approximately 1,048,387 reported deaths due to the disease.[132]

Due to the possibility that some H–2B workers may be unavailable due to travel restrictions, including those intended to limit the spread of COVID–19, or may become unavailable due to COVID–19 related illness, U.S. employers that have approved H–2B petitions or that will be filing H–2B petitions in accordance with this rule might not receive all of the workers requested to fill the temporary positions. Portability provides an alternative for such employers by allowing them to more expeditiously employ H–2B workers who are already in the United States. 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.[133] 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, is equitable and fair to H–2B workers who may have found themselves in situations that warrant a change in employers.[134] This flexibility also provides an alternative to H–2B petitioners who have not been able to find U.S. workers and who have not been able to obtain H–2B workers subject to the statutory or supplemental caps who have the skills to perform the job duties. In that sense as well, it is equitable and fair to employers.

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.[135] 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

[126] A similar portability provision exists in DHS regulations related to H–1B nonimmigrant workers, but does not include a 15-day period. *See* 8 CFR 214.2(h)(2)(i)(H)(2).

[127] *See* HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020).

[128] *See* HHS, *Renewal of Determination That A Public Health Emergency Exists, https://aspr.hhs.gov/legal/PHE/Pages/COVID19-13Oct2022.aspx* (Oct. 13, 2022).

[129] *See Proclamation 9994 of Mar. 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[130] *See 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.

[131] *See* World Health Organization, *WHO Coronavirus (COVID–19) Dashboard, https://covid19.who.int* (last visited Oct. 5, 2022).

[132] *See id.*

[133] 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.''

[134] 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.

[135] *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 Oct. 17, 2022).

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.[136]

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 2023 Omnibus, the Departments are using the DOL Form ETA–9142–B–CAA–7 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–7 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 and 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)(xiii)(B)(*2*)(*iii*) 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.[137] Because petitioners will submit the attestation 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, USCIS may deny or revoke, as applicable, a petition 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 and 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.[138] This obligation is also reflected as a condition of H–2B portability under this rule. *See* new 8 CFR 214.2(h)(29)(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.'' [139] More recently, the Biden Administration reiterated its call on employers to provide paid time off to their employees to get booster shots.[140] Consistent with the President's statements, the Departments strongly urge, but do not require, that all employers seeking H–2B workers (not limited to those under this 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.[141] On January 22, 2022, similar requirements entered into force at land ports of entry and ferry terminals.[142] 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.

In addition, the Departments strongly encourage all petitioners to facilitate and provide flexibilities, to the greatest extent possible, to all their workers who wish to receive COVID–19 vaccinations.

H. DHS Petition Procedures

To petition for H–2B workers under the supplemental allocations in this rule, the petitioner must file a Form I–129 at the USCIS California Service Center in accordance with applicable regulations and form instructions, along with an unexpired TLC and the attestation Form ETA–9142–B–CAA–7. Petitions filed for supplemental allocations under this rule at any

[136] *See* ICE, *FAQs: Protected Areas and Courthouse Arrests, https://www.ice.gov/about-ice/ero/protected-areas* (last visited Oct. 17, 2022).

[137] *See* DOL, *Employee Rights—H–2B Workers and COVID–19, https://www.dol.gov/sites/dolgov/files/WHD/posters/H2B_COVID.pdf* (English) (last visited Oct. 17, 2022); *https://www.dol.gov/sites/dolgov/files/WHD/posters/H2B_COVID_SPA.pdf* (Spanish) (last visited Oct. 17, 2022).

[138] 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).

[139] *See* The White House, *Remarks by President Biden on the COVID–19 Response and the State of Vaccinations, 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/* (Apr. 21, 2021).

[140] *See* The White House, *FACT SHEET: Biden Administration Outlines Plan to Get Americans an Updated COVID–19 Vaccine Shot and Manage COVID–19 this Fall, https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/08/fact-sheet-biden-administration-outlines-plan-to-get-americans-an-updated-covid-19-vaccine-shot-and-manage-covid-19-this-fall/* (Sept. 8, 2022); *see also* The White House, *President Biden Announces New Actions to Protect Americans Against the Delta and Omicron Variants as We Battle COVID–19 this Winter, 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/* (Dec. 2, 2021).

[141] *See Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic,* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic,* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

[142] *See Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,* 87 FR 3425 (Jan. 24, 2022); *Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada,* 87 FR 3429 (Jan. 24, 2022); *Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,* 87 FR 24048 (Apr. 22, 2022).

location other than the USCIS California Service Center will be rejected and the filing fees will be returned. 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 H–2B 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.

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 20,000 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)(xiii). In this regard, a petition must be filed with a single Form ETA–9142–B–CAA–7 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 the first box of Form ETA–9142–B–CAA–7, 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 it or 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–7, 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, and Public Law 117–180. *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 655.67. Petitions submitted to DHS pursuant to Public Law 117–180, which extended the FY 2022 Omnibus, will be processed 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).

USCIS is implementing a change in the filing location for petitions filed under the supplemental allocations in this rule, with all such filings at a single location. Under standard processes, H–2B petitions are filed at one of two USCIS service centers generally based on the state in which the petitioner's primary office is located. To manage the additional workload from the supplemental allocations provided by this rule, all such filings will be centralized at the USCIS California Service Center. USCIS will reject petitions filed under the supplemental allocations in this rule at any location other than the USCIS California Service Center and will return the filing fees for any such petition.

Immediately upon publication of the rule, but no earlier than that date, USCIS will begin accepting returning worker H–2B petitions requesting dates of need starting on or before March 31, 2023, as well as H–2B petitions for workers from the Northern Central American Countries and Haiti with dates of need in the first half of FY 2023.[143] Beginning no earlier than 15 days after the second half statutory cap is reached, USCIS will begin accepting H–2B petitions requesting work to begin on or after April 1, 2023, through May 14, 2023, as well as H–2B petitions for workers from the Northern Central American Countries and Haiti with dates of need on or after April 1, 2023 through September 30, 2023. Finally, beginning no earlier than 45 days after the second half statutory cap is reached, USCIS will begin accepting H–2B petitions requesting work to begin on or after May 15 through September 30, 2023.

USCIS will reject any returning worker petition that is received after September 15, 2023, or after the applicable numerical limitation has been reached. DHS believes that 15 days

[143] DHS has determined, and USCIS will separately announce on its website, consistent with 8 CFR 106.4(g) and historical practice, that circumstances prevent the completion of processing of a significant number of H–2B supplemental cap petitions with start dates of need on or before March 31, 2023 that will be filed on or after the effective date of this rule within the 15-day premium processing timeframe. USCIS will therefore temporarily suspend premium processing for those petitions. This suspension will affect H–2B petitions filed under the NCA/Haiti allocation with start dates of work on or before March 31, 2023, as well as H–2B petitions filed under the returning worker allocation for the first half of FY 2023 (*i.e.,* those with start dates on or before March 31, 2023). DHS will resume premium processing of these petitions on January 3, 2023 at which time it will begin to accept premium processing requests for these petitions on Form I–907. This temporary suspension was considered when establishing filing periods for H–2B supplemental cap petitions with start dates on or after April 1, 2023.

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 Northern Central American/Haitian allocation and second half supplemental allocations provided in this rule have not yet been reached, USCIS will stop accepting petitions under those allocations that are received after September 15, 2023. *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.

Based on the time-limited authority granted to DHS by Public Law 117–180, on the same terms as section 204 of the FY 2022 Omnibus, DHS is notifying the public that USCIS cannot approve petitions seeking H–2B workers under this rule on or after October 1, 2023. *See* new 8 CFR 214.2(h)(6)(xiii)(C). Petitions pending with USCIS that are not approved before October 1, 2023 will be denied and any fees will not be refunded. *See* new 8 CFR 214.2(h)(6)(xiii)(C).

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 employers sought H–2B workers.

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.

Emergency Procedures

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.

Additional Recruitment

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)(xiii), 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. 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 certified start dates of work, as shown on its approved Form ETA–9142B, *Final Determination: H–2B Temporary Labor Certification Approval,* 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. As noted in the FY 2022 second half H–2B supplemental cap TFR, the Departments determined that this 30-day requirement is consistent with provisions contained in previous TFRs and better aligns with the goal of affording workers an adequate opportunity to apply for jobs closer to when they tend to search for temporary employment, as explained in 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; 87 FR 30334, 30353–54.

An employer that files an I–129 petition under 8 CFR 214.2(h)(6)(xiii) 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–7 but is not required to conduct additional recruitment for U.S. workers beyond the recruitment already conducted as a condition of certification. Only those employers with

still-valid TLCs with a certified 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 a TLC and attest that the recruitment will be conducted, as follows.

Placement of New Job Orders With State Workforce Agencies

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. Under this rule, employers must also provide the OFLC NPC with the unique TLC case number concurrently with their placement of new job orders with the SWAs. This notification will allow OFLC to cross reference and repost information about the job opportunities that are provided on the employers' certified Applications for Temporary Labor Certification and posted by OFLC on *SeasonalJobs.dol.gov,* which is DOL's electronic job registry authorized under 20 CFR 655.34. Once posted by OFLC, information about the employer's certified job opportunity will remain posted for a period of at least 15 calendar days, which is consistent with the period of time SWAs post job orders for intrastate and interstate clearance to recruit U.S. workers, as discussed below. The Departments believe this additional notification is a reasonable and cost-efficient method of disseminating available job opportunities to a wider audience and those U.S. workers who may be interested in applying. While not meant to recreate it, this action will serve the same functional purpose as the posting on *Seasonal Jobs.* To help employers who must conduct this notification requirement, DOL encourages employers to notify the OFLC NPC, at the same time notification is sent to the SWA, by sending an email to *H-2Bsupplementalvisas@dol.gov,* and including the words ''H–2B TFR 2023 Recruitment'' followed by the unique TLC case number in the subject line of the email.

The new job order placed with the SWA 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 at least 15 calendar days, during the period the employer is conducting the additional recruitment steps explained below and OFLC reposts the job opportunity information, 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 minimum 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.*

Contact With American Job Centers

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.

Contact With AFL–CIO for Jobs in Traditionally or Customarily Unionized Occupation or Industry

Second, when a job is in a traditionally or customarily unionized occupation or industry, 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,[144] 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*.[145] In addition, to help employers who must conduct this additional recruitment step, employers may also contact the national AFL–CIO and request assistance in circulating the job order to the nearest AFL–CIO office covering the area of intended employment to advertise and recruit U.S. workers for the job opportunity. The most effective means of contacting the national AFL–CIO is to email the job order and request for assistance to *H-2B@aflcio.org,* but employers may also visit *https://aflcio.org* to obtain information on other effective means of contacting the organization for assistance. As with the May 2022 TFR, upon receipt, the national AFL–CIO will distribute a copy of the job order, on behalf of the employer, to the most appropriate AFL–CIO office(s) serving the area of intended employment for that job opportunity. The Department believes that this approach will be more straightforward and simpler for employers, and therefore encourages employers to meet the notification requirement by contacting the national AFL–CIO directly.

When applicable, the employer must include information in its recruitment report confirming that either the national or nearest 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 either the national or nearest 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, 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

[144] 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 58 national and international labor unions covering a substantial number of union employees. AFL–CIO, About Us, *https://aflcio.org/about-us* (last visited Nov. 9, 2022). The H–2B job opportunities in traditionally or customarily unionized occupations most frequently fall within those industries most likely to be organized or represented by AFL–CIO member unions.

Additionally, the AFL–CIO's status as the largest federation of unions in the United States provides for comprehensive national coverage and increases the chances that a U.S. worker will be hired. *See* AFL–CIO Press Release, *https://aflcio.org/press/releases/afl-cio-teams-wilmington-trust-and-bny-mellon-expand-retirement-planning-options* (last visited Nov. 21, 2022) (noting the AFL–CIO is ''the nation's largest federation of labor unions''). As discussed below, the SWAs circulation of relevant job orders based on their knowledge of the local labor market would provide effective outreach to other federations of unions and non-affiliated unions.

[145] 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.*

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 unions, this requirement increases outreach to qualified U.S. workers. Moreover, this 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.

Contact With Former U.S. Workers

Third, 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 written 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, 2021, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(xiii) 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 placed with the SWA, and solicit their return to the job. The employer must provide the contact and disclosures required by this paragraph in a language understood by the worker, as necessary or reasonable, and in writing to ensure the recruitment effort is effective and meaningful in reaching each former U.S. worker. While previous rules have not specified how employers should make the contact and disclosure, the Departments have found that employers are often using methods of written disclosure (such as emails or letters sent through certified mail), and are clarifying in this rule that the contact and disclosure with former workers must be written. The Departments believe that written contact and disclosure of the terms of the job order is more effective than oral disclosure, and provides greater assurance that workers understand the terms and working conditions of the job opportunity and can more effectively pursue redress if they do not receive the disclosed terms and working conditions. The Departments also believe that this change will make it easier for employers to establish compliance with this requirement, if necessary.

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 course of the COVID–19 pandemic and who may be seeking employment as the economy continues to recover and as more people are vaccinated and boosted. 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.

Contact With the Bargaining Representative or Posting of the Job Order

Fourth, 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). Similar to the requirement to contact former U.S. workers, discussed above, the employer must provide the contact and disclosures required by this paragraph in a language understood by the worker, as necessary or reasonable, and in writing to ensure the recruitment effort is effective and meaningful in reaching each former U.S. worker.

New Recruitment Requirements for FY 2023

Finally, as discussed below and as a change from prior TFRs, employers under this rule must expand their recruitment efforts by contacting U.S. workers currently employed at the place of employment to inform them of the job opportunity and request their assistance in recruiting qualified U.S. workers who may be seeking employment and, where employers maintain a company website, by posting the job opportunity in a conspicuous location on that site. Given the number of current U.S. workers who remain unemployed, including those marginally attached to the labor force, and mainstream estimates that labor shortages may ease somewhat due to rising unemployment during 2023, the Departments believe it is reasonable and appropriate to require employers seeking to access the supplemental visas during FY 2023 to expand their efforts in attracting qualified U.S. workers who are likely to apply for the job opportunity.

Although the unemployment rate has remained historically low and in a narrow range of 3.5% to 3.7% since March 2022, the BLS recently reported that the number of unemployed persons rose by 306,000 to 6.1 million in October 2022. The BLS also noted that there were another 5.7 million persons in the labor force, including those marginally attached to the labor force, who are not counted as unemployed and currently want a job.[146] The number of discouraged workers, a subset of all persons marginally attached to the labor force and who believed that no jobs were available for them, decreased by 114,000 to 371,000 in October 2022, providing evidence that an increasing number of U.S. workers are making decisions to reenter the workforce.

Concurrently, some employers have been responding to recent trends in the labor market by intensifying and expanding their efforts to attract

[146] U.S. Department of Labor, Bureau of Labor Statistics, *The Employment Situation Report—October 2022,* available at *https://www.bls.gov/news.release/archives/empsit_11042022.htm* (accessed Nov. 6, 2022). BLS reports that the number of persons not in the labor force who currently want a job was little changed at 5.7 million in October and remains above its pre-pandemic February 2020 level of 5.0 million. These individuals were not counted as unemployed because they were not actively looking for work during the 4 weeks preceding the survey or were unavailable to take a job. Among those not in the labor force who wanted a job, the number of persons marginally attached to the labor force was little changed in October at 1.5 million. These individuals wanted and were available for work and had looked for a job sometime in the prior 12 months but had not looked for work in the 4 weeks preceding the survey.

qualified U.S. workers. For example, a recent report published by the Federal Reserve Bank of Richmond, which leveraged data based on a June 2022 survey of employer hiring behavior, noted that the intensity of employer recruiting has substantially increased, with more employers reporting expansions of their recruiting efforts in the past year and compared to pre-pandemic levels.[147] In particular, the report noted that tightness of the labor market has resulted in not only an increase in the number of open jobs per unemployed worker but, as employers continue to compete for a smaller pool of qualified applicants, they are exerting more effort and using a broader array of recruiting methods to reach qualified candidates for job vacancies. Additionally, a majority of employers reported expanding the geographic scope of their recruitment efforts and using enhanced word-of-mouth recruiting (*e.g.,* recommendations from professional contacts, friends and family), targeting different job fairs, and holding virtual career fairs to reach qualified candidates. The Federal Reserve Bank of Richmond noted that these changes in employer hiring behavior were broad-based and consistent across industry and firm size as well as the level of skills required for the job opportunities.

Finally, while the Departments cannot predict with certainty what labor market conditions will be during calendar year 2023, mainstream estimates of labor market conditions for calendar year 2023 suggest that labor shortages may ease somewhat due to rising unemployment (although they are expected to persist to some degree in the coming years). For example, in conjunction with its Federal Open Market Committee meeting held on September 20 and 21, 2022, the Federal Reserve Board released its projections of the most likely outcomes for the U.S. economy and labor market, predicting that the unemployment rate will increase from an estimated average of 3.8% in 2022 to approximately 4.4% in 2023.[148] Similarly, in its October 12, 2022 publication, the Conference Board predicts that the unemployment rate will likely rise to an estimated 3.9% by the end of this year and peak at 4.4% during 2023. Although unemployment will remain low by historical standards, these estimates suggest that an increasing number of U.S. workers will likely be unemployed and actively searching for work during 2023, when compared to labor conditions within the past year.

Given the most recent labor market data, mainstream estimates of labor market conditions for calendar year 2023, and evidence that employers have been responding to recent labor market dynamics by intensifying and expanding their recruitment efforts, the Departments believe it is reasonable and appropriate, at this time, to require employers seeking H–2B workers under this rule to expand their recruitment efforts both in methods to locate qualified U.S. workers, especially as the supplemental visas are meant for those businesses that have encountered or would encounter truly dire circumstances due to an inability to access the supplemental visas. Without these additional, reasonable recruitment actions, it is possible that the supplemental visas could be provided to employers that could find qualified U.S. workers, frustrating Congress' intent.

New Recruitment Requirement for FY 2023: Contact With Current U.S. Workers

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 written means) all U.S. workers it currently employs at the place(s) of employment under the certified TLC. The employer must disclose to each of its current U.S. workers the terms of the job order placed with the SWA, and request assistance in recruiting qualified U.S. workers who may be interested in applying for the job opportunity. The contacts, disclosures, and requests for assistance required by this paragraph must be provided in a language understood by the worker, as necessary or reasonable, and in writing to ensure the recruitment effort is effective and meaningful in reaching each current U.S. worker.

The employer must retain all documentation establishing that it has contacted each U.S. worker it currently employs at the place(s) of employment under the certified TLC and submit all such information upon request from the Departments. Documentation or evidence that would help employers establish compliance with this regulatory requirement may include, but is not limited to the following: documentation proving the job order, along with a request for assistance to recruit workers, was shipped and delivered to each current U.S. worker's address (*e.g.,* copy of the job order and request for assistance 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 emailed to the current U.S. worker (*e.g.,* copies of emails); or copies of any correspondence exchanged (*e.g.,* letter, email) between the employer and the current U.S. worker regarding referrals of other qualified U.S. workers.

Given the evolving conditions of the U.S. labor market and changing behavior by employers to intensify and expand their recruitment efforts, as described above, the Departments believe this recruitment step is a reasonable and cost-effective method of broadening dissemination of available job opportunities and increasing the likelihood that qualified U.S. workers will apply. We believe the requirement that employers contact their current U.S. workers employed at the place(s) of employment and solicit their assistance in recruiting other qualified U.S. workers will complement the requirement that employers post the job order in the places and manner described in 20 CFR 655.45(b), enhance word-of-mouth recruiting that is a common method of soliciting referrals of qualified U.S. workers, and increase the likelihood of locating U.S. workers suited for the job opportunity more quickly and efficiently. U.S workers currently employed by the employer, who are more likely to be familiar with the nature of the employer's business operations and services or labor to be performed, will generally refer other U.S. workers who are qualified and may be more inclined to contact an employer

[147] Claudia Macaluso, and Sonya Ravindranath Waddell, *Changing Recruiting Practices and Methods in a Tight Labor Market,* Federal Reserve Bank of Richmond Economic Brief, No. 22–36, September 2022, available at *https://www.richmondfed.org/publications/research/economic_brief/2022/eb_22-36* (accessed Nov. 6, 2022). The report is based on the Federal Reserve Bank of Richmond's *Survey of Employer Recruiting Behavior,* which was conducted jointly with the Richmond chapter of the Society for Human Resources Management and surveyed 155 in-house recruiters and HR professionals from a variety of industries and firm sizes between June 1 to June 17, 2022.

[148] Federal Reserve Board, Federal Open Market Committee, Summary of Economic Projections, September 21, 2022, available at *https://www.federalreserve.gov/monetarypolicy/fomcprojtabl20220921.htm* (access Nov. 6, 2022). Projections for the unemployment rate are for the average civilian unemployment rate in the fourth quarter of the year indicated. The Federal Reserve Board forecasts a 4.4% median unemployment rate for 2023, which represents the middle projection when the projections are arranged from lowest to highest, and 4.1% to 4.5% central tendency unemployment rate range for 2023, which excludes the three highest and three lowest projections in each calendar year.

directly upon learning of the job opportunity from a family, friend, or colleague with experience working for the employer.

The requirements to contact current and 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.

New Recruitment Requirement for FY 2023: Posting of the Job Opportunity on the Employer's Website If the Employer Has a Website

Where the employer maintains a company website for its business operations, the employer must post an electronic advertisement of the job opportunity in a conspicuous location on this website. Although the vast majority of small businesses in the United States maintain a website, the Departments acknowledge that not all employers maintain a company website.[149] Although there is no parallel requirement for employers without a website, requiring employers with websites to post the job announcement on their website is reasonable because this population of employers uses their websites to inform the public about their existence and/or the services they may provide. Thus, these employers' advertisement of the job opportunity, via their websites, is consistent with these employers' use of the internet/electronic means to communicate with the public. Accordingly, this recruitment requirement will apply only to employers that maintain a website for business operations. For employers who must conduct this additional recruitment step, the electronic advertisement of the job opportunity on the company website must be posted in a conspicuous location. This means access to the electronic advertisement on the company website must be clearly visible on the website's homepage or easily accessible from the website's homepage using any job search tool(s) or direct links from the homepage to a subsequent web page where other available jobs or careers are normally posted by the employer.

The Departments have concluded that keeping the electronic advertisements on company websites posted for a period of at least 15 calendar days, along with the other additional recruitment steps discussed above, will effectively ensure that 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 minimum 15 calendar day period is also consistent with the employer-conducted recruitment activity period applicable under 20 CFR 655.40(b).

The employer must retain all documentation establishing that it has posted the electronic advertisement of the job opportunity in compliance with regulatory requirements and submit all such information upon request from the Departments. Documentation or evidence for employers to establish compliance with these regulatory requirements can include screenshots of the company website on which the advertisement appears for a period of no less than 15 days and screen shots of the web pages establishing the path that U.S. workers must follow to access the advertisement on the website.

Hiring U.S. Workers

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 this 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 that the job opportunity must be, through the recruitment period set forth in this rule, 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 material 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

[149] The U.S. Chamber of Commerce reports that 71% of small businesses have a website and, of those with websites, 79% of survey respondents claimed that their websites are mobile-friendly. According to the survey results, 92% of the 29% of small businesses without a website reported planning to have one up and running by the end of 2018. *See* U.S. Chamber of Commerce, Small Business Statistics, available at *https://www.chamberofcommerce.org/small-business-statistics/#marketing-statistics* (accessed Nov. 6, 2022).

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. 74 FR 45917. 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)(29). 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 and 2023, 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).

The Departments are committed to ensuring that all recruitment conducted in conjunction with this rule complies with the additional recruitment requirements discussed above and encourages individuals with information about that recruitment to contact DOL through the OFLC H–2B Ombudsman Program email box (*H2B.Ombudsman@dol.gov*). The H–2B Ombudsman Program facilitates the fair and equitable resolution of concerns that arise within the H–2B filing community, by conducting independent and impartial inquiries into issues related to the administration of the H–2B program. The H–2B Ombudsman Program also receives concerns and information relevant to case processing from employers, unions, and worker advocate organizations and ensures such information is appropriately referred within OFLC or to SWAs, as appropriate.

DOL actively monitors the H–2B Ombudsman Program email box, which is the best method for the public to provide information to the Department that is relevant to the processing of H–2B applications. Such information may include information about an in-process TLC application, information regarding the employer's compliance with H–2B recruitment of U.S. workers, or information bearing on an employer's irreparable harm justification. When the H–2B Ombudsman Program receives information relevant to its review of an H–2B TLC application, the information will be forwarded to the H–2B processing center. The H–2B processing center will review the information it receives and will consider it, as appropriate.

The H–2B Ombudsman Program, however, is not an alternative to the employment service complaint system administered by the Employment and Training Administration under regulations at 20 CFR 658, subpart E. Any information relevant to an employment service complaint will be forwarded to the appropriate SWA. The public may also submit employment service complaints directly to the appropriate SWA; the contact information for each SWA is available at the following web page: *https://www.dol.gov/agencies/eta/foreign-labor/contact.*

Complaints regarding an employer's failure to comply with the H–2B program requirements may also be submitted to DOL's WHD. 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 to workers; 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 655.67, 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.

When conducting an investigation, WHD will generally review the employer's compliance with this rule, the H–2B program obligations in

general, and any other Federal labor laws that WHD enforces (such as the Fair Labor Standards Act, which establishes minimum wage, overtime, recordkeeping and child labor obligations for most employers in the United States) and to which the employer is subject. WHD's investigations generally involve meeting with the employer, touring the worksite, conducting confidential interviews with employees, reviewing records (including those required by new 20 CFR 655.67 evidencing compliance with this rule), and, when appropriate, imposing sanctions and remedies (including back wages). For example, in the past five years (Fiscal Years 2018–2022), WHD collected more than $13.8 million in H–2B back wages owed to 8,654 workers, and assessed more than $10.6 million in H–2B civil money penalties.

Within the context of this rule, WHD's investigative tools are particularly adept for the review of alleged violations that may result in back wages and/or that require intensive fact-finding at the worksite. Additionally, WHD is well suited to investigate alleged violations that occur after the job order has closed and H–2B workers are already in the United States. For example, WHD's tools are well suited to investigate allegations that U.S. applicants were improperly rejected for the job opportunity (if supplemental recruitment was required as outlined in 20 CFR 655.65(a)(5)) after the job order has closed, as WHD may conduct employee interviews, question the employer as to why the applicant was not hired, review recruitment records, and, if a violation is substantiated, compute back wages for the improperly rejected U.S. applicant. Similarly, WHD is well suited to investigate an allegation that an employer is not complying with the obligations in § 655.65(a)(4) (meaning that the employer is not complying with applicable employment related laws or regulations, or is not notifying the workers that all persons in the United States have equal access to COVID–19 vaccines and vaccine distribution sites), as substantiating this allegation may involve interviews with affected H–2B workers or the employer and a tour of the worksite.

Additionally, WHD is well suited to investigate allegations of retaliation, as these cases involve complex fact finding and, if allegations are substantiated, may result in make-whole relief or back wages owed to the worker. An employer is prohibited from intimidating, threatening, restraining, coercing, blacklisting, discharging, or in any manner discriminating against any person 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). Examples of protected activity include making a complaint to a manager, employer, or WHD; cooperating with a WHD investigation; requesting payment of wages; refusing to return back wages to the employer; consulting with WHD or workers' rights organization; and testifying in a trial. If other laws are applicable (such as the Fair Labor Standards Act), the anti-retaliation provisions of those laws may also be applicable.

In addition to the H–2B Ombudsman Program and the complaint process under 20 CFR part 658, subpart E, which are described above, workers or U.S. applicants for job opportunities who believe their rights under the H–2B program have been violated may file 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. Complainants should be prepared to provide their name and contact information; name, address, and contact information for the employer; and details about the alleged violation. WHD maintains all complaints as confidential unless the complainant provides WHD with permission to use their name when speaking to the employer.

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 that occurs 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–7, 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)(xiii), 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–7 to be an appendix to the Application for Temporary Employment Certification and the attestations contained on the Form ETA–9142B–CAA–7 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–7 and documentation supporting the attestations. In order to make certain that the supplemental visa allocation is not subject to fraud or abuse, DHS will continue to share information regarding Forms ETA–9142B–CAA–7 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 655.67, 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). 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. *See, e.g., Nat'l Fed'n of Fed. Emps.* v. *Devine,* 671 F.2d 607, 611 (D.C. Cir. 1982) (holding that an agency may use the good cause exception to address ''a serious threat to the financial stability of [a government] benefit program''); *Am. Fed'n of Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981) (finding good cause when an agency bypassed notice and comment to avoid ''economic harm and disruption'' to a given industry, which would likely result in higher consumer prices).

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 due to the time exigencies resulting from the unique procedural history of the Department's authority for this action and the ongoing economic need for this rulemaking, as described further below. Overall, 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 the failure to provide supplemental visas as authorized by Congress. *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.,*[150] and limits eligibility for H–2B supplemental visas to only those businesses most in need, and also protects H–2B and U.S. workers.

The Departments are bypassing advance notice and comment in order to prevent economic harm resulting from American businesses suffering irreparable harm due to a lack of a sufficient labor force, that would ensue if the Departments do not exercise the authority provided by the extension of supplemental cap authority in Section 204 of the Consolidated Appropriations Act, 2022 by section 101(6) of the FY 2023 Continuing Appropriations Act, 2023 (authorized on September 30, 2022) to FY 2023 before it expires on December 16, 2022.[151] The deadline for exercising the FY 2023 supplemental

[150] 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, 2023. The ability to initiate employment with a new employer pursuant to the portability provisions of this rule expires at the end of on January 24, 2024.

[151] *See* Section 204, Consolidated Appropriations Act, 2022, Division O, Public Law 117–103 (Mar. 15, 2022), extended by section 101(6) of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Division A (''Continuing Appropriations Act, 2023''), Public Law 117–180 (Sep. 30, 2022). Pursuant to section 106 of the Continuing Appropriations Act, 2023, Division A, Public Law 117–180, the deadline for exercising the FY 2023 supplemental cap authority under this act is Dec. 16, 2022, the date on which the Continuing Appropriations Act expires.

cap authority under the Continuing Appropriations Act, 2023 is December 16, 2022, the date on which the Continuing Appropriations Act, 2023 expires.[152] The Departments must give effect to this authority prior to its expiration in order to urgently address increased labor demand [153] and insufficient labor supply, and other conditions stemming from the ongoing economic consequences of the ongoing COVID–19 [154] pandemic, including high inflation. 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,[155] and reports suggest this trend has continued in 2022. Furthermore, the pandemic has had an impact on inflation [156] and supply chains.[157] 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 which further aggravates inflation.[158]

USCIS received more than enough petitions to meet the H–2B visa statutory cap for the first half of FY 2023 on September 12, 2022,[159] more than two weeks earlier than when the semiannual cap for the first half of FY 2022 was reached.[160] Based on past years' experience, DHS anticipates that it will also receive sufficient petitions to meet the semiannual cap for the second half of the FY 2023; last year on February 25, 2022, USCIS received sufficient petitions to meet the H–2B visa statutory cap for the second half of FY 2022. Given the continued high demand of American businesses for H–2B workers, rapidly evolving economic conditions and historically high labor demand, and the limited time remaining until the expiration of the continuing resolution authorizing supplemental cap authority to help prevent further irreparable harm currently experienced by some U.S. employers or avoid impending economic harm for others,[161] a decision to undertake notice and comment rulemaking, which would delay final action on this matter by months, would greatly complicate and potentially preclude the Departments from successfully exercising the authority created by section 204, Public Law 117–103 as extended to FY 2023 by secs. 101(g) and 106, Public Law 117–180.

The temporary portability and change of employer provisions in 8 CFR 214.2 and 274a.12 are also supported by ongoing effects of the COVID–19 pandemic, including labor market

[152] In addition, it would not be possible to publish a notice of proposed rulemaking, collect comments, review those comments, and issue a final rule prior to the expiration of the authority that supports this rule.

[153] *See* 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.'')

[154] ''The U.S. has extended the Covid public health emergency through Jan. 11, a clear demonstration that the Biden administration still views Covid as a crisis despite President Joe Biden's recent claim that the pandemic is over.'' *See* Spencer Kimball, *U.S. extends Covid public health emergency even though Biden says pandemic is over,* CNBC Health & Science, *https://www.cnbc.com/2022/10/13/us-extends-covid-public-health-emergency-.html* (last visited Oct. 25, 2022).

[155] *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* 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.''); Bureau of Labor Statistics, Monthly Labor Review, *Great Resignation in Perspective,* July 2022, *https://www.bls.gov/opub/mlr/2022/article/the-great-resignation-in-perspective.htm* (last visited Oct. 25, 2022) (''Over the last year, the rate of job quitting in the United States has reached highs not seen since the start of the U.S. Bureau of Labor Statistics Job Openings and Labor Turnover Survey program in December 2000. This recent phenomenon has been called the ''Great Resignation.'').

[156] *See* Tom Barkin, *What's Driving Inflation* (''The pandemic (and the responses to it) unleashed a series of physical and human supply shocks that have pushed prices and wages up and lasted far longer than anyone anticipated.''), *https://www.richmondfed.org/press_room/speeches/thomas_i_barkin/2022/barkin_speech_20220930* (Sep. 30, 2022). On October 20, 2022, BLS reported that the CPI–U increased 0.4 percent in September on a seasonally adjusted basis after rising 0.1 percent in August. Over the previous 12 months, the all items index increased 8.2 percent as of September 2022 before seasonal adjustment. *See also* BLS, Economic News Release, Consumer Price Index Summary (Oct. 20, 2022), *https://www.bls.gov/news.release/archives/cpi_10132022.htm.*

[157] *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.''). *See also* Reuters, *Supply chain data eases, giving some hope for U.S. inflation relief* (''Supply-related issues have been a major problem for the economy and for monetary policymakers for some time now. Supply disruptions tied to the pandemic have now been joined by disruptions related to Russia's war on Ukraine . . . . Last week, Fed second-in-command Lael Brainard cautioned it could take a while for supply chains to help with inflation, and noted in a speech that ''global supply chains have eased significantly, but by some measures they are still more constrained than at nearly any time since the late 1990s.''), *https://www.reuters.com/markets/us/supply-chain-data-eases-giving-some-hope-us-inflation-relief-2022-10-17/* (last visited Oct. 25, 2022); U.S. Department of the Treasury, *Remarks by Secretary of the Treasury Janet L. Yellen at the Securities Industry and Financial Markets Association's Annual Meeting https://home.treasury.gov/news/press-releases/jy1045* (last visited Oct. 25, 2022) (''Our economic potential had been weighed down by sluggish productivity growth and declining labor force participation. Inequality had soared, with profound disparities by race and geography. And our economy had been over-exposed to the actions of malicious geopolitical actors . . ., vulnerabilities in our supply chain, and the growing impacts of climate change.'').

[158] *See* 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)

[159] *See* USCIS, *USCIS Reaches H–2B Cap for First Half of FY 2023 https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2023* (Sep. 14, 2022).

[160] 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).

[161] *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.'').

demands. 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.[162] 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, April 12, 2022, and most recently, on October 13, 2022.[163] 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.[164]

Travel restrictions have 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.[165] On January 22, 2022, similar requirements entered into force at land ports of entry and ferry terminals.[166] Varying availability of vaccines in some H–2B nonimmigrants' home countries could also complicate travel.

In addition to travel restrictions, as discussed elsewhere in this rule, current efforts to curb the pandemic in the United States and worldwide have only 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 in similar situations 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).

The Departments recognize that the temporary nature of supplemental cap authority coupled with cyclical enactments and short timeframes for action, and the exigencies surrounding COVID–19 have not provided an opportunity for the public to weigh in on the implementation of this authority. While it is not possible to provide an opportunity for public comment prior to the implementation of this year's authority, and as explained above, the Departments have good cause to forgo notice and comment rulemaking, the Departments nevertheless recognize the importance of public input and believe they could receive valuable feedback that may lead to future improvements in the supplemental cap program. Therefore, DHS and DOL are accepting post-promulgation public comments for 60 days after the effective date of this rule as indicated in the **DATES** section.

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 an economically significant regulatory action. Accordingly, the Office of Management and Budget has reviewed this regulation.

1. Summary

With this temporary final rule (TFR), DHS is authorizing the release of an additional 64,716 total H–2B visas to be allocated throughout FY 2023. In accordance with the FY 2023 continuing resolution extending the authority provided in section 204 of the FY 2022 Omnibus, DHS is allocating the

[162] *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).

[163] *See* HHS, *Renewal of Determination That A Public Health Emergency Exists, https://aspr.hhs.gov/legal/PHE/Pages/covid19-13Oct2022.aspx* (Oct. 20, 2022).

[164] *See* 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).

[165] *See Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic,* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic,* 86 FR 61224 (Nov. 5, 2021).

[166] *See Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico,* 87 FR 3425 (Jan. 24, 2022); *Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada,* 87 FR 3429 (Jan. 24, 2022).

supplemental visas in the following manner:

Table 1. Allocation of Supplemental Visas	
Supplement	Number of visas
FY23 1st Half RW Allocation	18,216
FY23 second Half RW Allocation	16,500
FY23 second Half RW Allocation #2 - (Late season Filers)	10,000
FY23 NCA/Haiti Allocation (available whole FY)	20,000
FY23 Total Supplemental Visas	64,716

As with previous H–2B visa supplements, these visas will be available to businesses that: (1) show that there are an insufficient number of U.S. workers to meet their needs throughout FY 2023; (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 2020, 2021, or 2022, unless the H–2B worker is a national of one of the Northern Central American countries or Haiti. Additionally, up to 20,000 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 2023.

The estimated total costs to petitioners range from $6,538,620 to $8,568,381. The estimated total cost to the Federal Government is $333,774. Therefore, DHS estimates that the total cost of this rule ranges from $6,872,394 to $8,902,155. Total transfers from filing fees made by petitioners to the Government are $9,126,020.[167] The benefits of this rule are diverse, though some of them are difficult to quantify. Some of these benefits include:

• Employers benefit from this rule significantly through increased access to H–2B workers;

• Customers and others benefit directly or indirectly from increased access;

• 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;[168]

• 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;

• The existence of 20,000 visas set aside for workers from Guatemala, Honduras, El Salvador and Haiti gives lawful pathways for nationals from these countries to travel to and work in the U.S. and, therefore, provides multiple benefits in terms of U.S. policy with respect to the Northern Central American countries and Haiti; and

• The Federal Government benefits from increased evidence regarding attestations. Table 2 provides a summary of the provisions in this rule and some of their impacts.

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[167] DHS has determined, and USCIS will separately announce on its website, consistent with 8 CFR 106.4(g) and historical practice, that circumstances prevent the completion of processing of a significant number of H–2B supplemental cap petitions with start dates of need on or before March 31, 2023 that will be filed on or after the effective date of this rule within the 15-day premium processing timeframe. USCIS will therefore temporarily suspend premium processing for those petitions. This suspension will affect H–2B petitions filed under the NCA/Haiti allocation with start dates of work on or before March 31, 2023, as well as H–2B petitions filed under the returning worker allocation for the first half of FY 2023 (*i.e.* those with start dates on or before March 31, 2023). DHS will resume premium processing of these petitions on January 3, 2023 at which time it will begin to accept premium processing requests for these petitions on Form I–907. DHS cannot quantify to what extent, if any, some petitioners may modify their behavior in response to this temporary suspension of premium processing. Therefore, DHS believes that analyzing historical trends in premium processing requests is the best method for estimating the population that may request premium processing due to this rule, and DHS recognizes the estimates made for both costs and transfers in the analysis could be on the higher end due to the possibility that the temporary suspension in premium processing could modify filing behavior.

[168] *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 2. 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 64,716 H-2B temporary workers. Up to 20,000 of the 64,716 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 opportunity cost of time to file Form I-129 (Petition for a Nonimmigrant Worker) by human resource specialists is approximately $499,597. The total estimated opportunity cost of time to file Form I-129 and Form G-28 will range from approximately $1,062,796 if filed by in-house lawyers to approximately $1,832,442 if filed by outsourced lawyers. The total estimated opportunity cost of time associated with filing additional petitions ranges from $1,562,393 to $2,332,039 depending on the filer. - The total estimated opportunity cost of time associated with filing Form I-907 (Request for Premium Processing Service) if it is filed with Form I-129 is $62,469 if filed by human resource specialists. The total estimated costs	- 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 additional H-2B workers were not available.

		associated with filing Form I-907 would range from approximately $111,574 if filed by an in-house lawyer to approximately $192,363 if filed by an outsourced lawyer. The total estimated opportunity cost of time associated with requesting premium processing ranges from approximately $174,043 to approximately $254,832. - The total estimated costs of this provision to petitioners range from $1,736,436 to $2,586,871, depending on the filer.	
n/a	-Petitioners will be required to fill out Form ETA-9142-B in order to utilize the 10,000 late season H-2B visas allocated under the rule	- The estimated cost for late season petitioners to file Form ETA-9142-B ranges from $107,665 to $157,666 depending on the filer.	-An approved Form ETA-9142-B is required before filing a Form I-129 to request H-2B workers.
n/a	- Petitioners will be required to fill out the newly created Form ETA-9142-B-CAA-7, 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-7 is approximately $1,797,155.	- Form ETA-9142-B-CAA-7 will serve as initial evidence to DHS that the petitioner meets the irreparable harm standard and returning worker requirements.
n/a	- Petitioners would be required to conduct an	- The total estimated cost to petitioners to conduct an additional	- The additional round of recruitment will ensure that a U.S. worker who is willing and

	additional round of recruitment.	round of recruitment is approximately $239,401.	able to fill the position is not replaced by a nonimmigrant worker.
Temporary Portability	- An H-2B nonimmigrant who is physically present in the United States may port to another employer.	- The total estimated opportunity cost of time to file Form I-129 by human resource specialists is approximately $25,461. The total estimated opportunity cost of time to file Form I-129 and Form G-28 will range from approximately $54,296 if filed by in-house lawyers to approximately $93,615 if filed by outsourced lawyers. - The total estimated costs associated with filing Form I-907 if it is filed with Form I-129 is $3,202 if filed by human resource specialists. The total estimated costs associated with filing Form I-907 would range from approximately $5,669 if filed by an in-house lawyer to approximately $9,774 if filed by an outsourced lawyer. - The total estimated costs associated with the portability provision ranges from $88,628 to $132,052, depending on the filer. - DHS may incur some additional adjudication costs as more	- 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.

		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.	
n/a	- 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 information regarding COVID-19 vaccines and vaccination distribution sites is approximately $1,294.	- Workers would be given information about equal access to vaccines and vaccination distribution.
n/a	- 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	- 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.

		requirements is $21,486.	
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 cost of time that ranges from $2,339,495 to $3,425,396.	- Petitioners will have the necessary information to take advantage of and comply with the provisions of this rule.
Total Costs		Total cost of the rule to petitioners ranges from $6,538,620 to $8,568,381 depending on the filer. Total costs of the rule to government are $333,774. Total costs of the rule range from $6,872,394 to $8,902,155.	
Source: USCIS and DOL analysis.			

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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.[169] The INA sets the annual number of H–2B visas for workers performing temporary nonagricultural work at 66,000 to be distributed semiannually beginning in October (33,000) and in April (33,000).[170] Any unused H–2B visas from the first half of the fiscal year are 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 would therefore not be made available.[171] 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 September 30, 2022, the President signed the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 that contains a provision reauthorizing Sec. 204 of Div. O of the FY 2022 Omnibus, 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 a total of 64,716 visas for FY 2023. The total supplemental allocation will be divided into four separate allocations: one for the first half of FY 2023, two for the second half of FY 2023 (a first one for employment from April 1 through May 14, 2023, and a second one for those with filing dates after May 15, 2023), and a full fiscal year allocation for workers from NCA countries and Haiti. As with previous supplemental allocations, USCIS will make these supplemental visas available only to businesses that qualify and meet the requirements for the supplemental vias. 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.

In contrast to previously issued H–2B TFRs which codified the availability of supplemental H–2B visas only after the relevant statutory fiscal half-year caps had been reached, the Secretaries have determined that this TFR will cover the entirety of FY 2023. While the Departments cannot predict with certainty what labor market conditions will be during the second half of FY 2023, they believe that the structure of this TFR is reasonable because (1) the

[169] Revised effective 1/18/2009; *Changes to Requirements Affecting H–2B Nonimmigrants and Their Employers; Correction,* 73 FR 78104 (Jan. 19, 2009)*; Changes to Requirements Affecting H–2B Nonimmigrants and Their Employers; Correction,* 74 FR 2837 (Jan 18, 2009).

[170] *See* INA 214(g)(1)(B), 8 U.S.C. 1184(g)(1)(B) and INA 214(g)(4), 8 U.S.C. 1184(g)(4).

[171] 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).

availability of the second half FY supplemental visas is contingent on the exhaustion of the second half FY statutory cap, (2) strong historical demand for H–2B workers, and (3) mainstream estimates of labor market conditions for FY 2023 indicate a continuation of labor market tightness from a historical perspective.[172]

Table 3. DOL Certified Worker Demand[173]

Fiscal Year	Number of Certifications	Number of DOL Certified Workers Requested	DOL Certified Workers with requested start dates 4/1 or later
2017	5,889	113,923	68,807
2018	6,675	130,536	86,568
2019	7,044	143,310	92,415
2020	6,816	137,884	88,466
2021	7,772	159,081	100,522
5-yr Average[174]	6,839	136,947	87,356

Withrespect to historical demand for H–2B workers, Table 3 makes two important points supporting the Departments' decision to structure this rule in a manner that covers the entire fiscal year. First, Table 3 shows that H–2B demand, as represented by the number of workers requested on certified TLCs, has outpaced the statutorily capped allotment of H–2B visas. This demonstrates that, in aggregate, there is sufficient demand for the entire supplementary allocation that the Departments are making available. To that end, the 5-year average of workers requested on certified TLCs, 136,947, would still completely exhaust the total supplemental allocation made available by the TFR. Second, Table 3 demonstrates that within a given fiscal year, demand for H–2B workers is particularly strong in the second half of the fiscal year. On average over the last 5 fiscal year, H–2B employers have requested 87,356 employees with start dates on April 1 or later, which would completely exhaust the 26,500[175] total supplemental H–2B visas explicitly set aside for workers with employment start dates in the first portion of the second half of FY 2023. Given these conditions, the Departments believe that the decision to authorize a second half supplement is reasonable.

In terms of the actual distribution of the visas being made available by the Rule, the Departments have determined that up to 44,716 of the 64,716 these supplemental visas will be limited to returning H–2B returning workers for nationals of any country. These individuals must be workers who were issued H–2B visas or were otherwise granted H–2B status in fiscal years 2020, 2021, or 2022. The 44,716 visas for returning workers will be divided into three separate allocations that will be available to petitioners over the fiscal year. The first allocation is comprised of 18,216 visas for returning workers with requested start dates between October 1, 2022, and March 31, 2023. These visas will be available to petitioners immediately upon the publication of the rule. The second allocation is comprised of 16,500 visas for returning workers with requested start dates between April 1, 2023, and May 14, 2023. These visas will be available to petitioners 15 calendar days after the second half statutory cap of 33,000 visas is reached. The third allocation is comprised of 10,000 visas for returning workers with requested start dates between May 15, 2023, and September 30, 2023. These visas will be available to petitioners 45 calendar days after the second half statutory cap of 33,000 visas is reached.

The inclusion of an allocation of visas specifically for those petitioners with employment needs starting on or after May 15 is in response to trends in TLC data since FY 2016, illustrated in Table 4 and Table 5. More specifically, the increase in the relative prevalence of April 1 start dates since 2016 gives rise to concerns that petitioners with employment needs later in the fiscal year may not have the opportunity to utilize the H–2B program because the supply of supplemental visas is already exhausted by the time a petitioner with a later start date can file a TLC and receive eligibility to request workers on Form I–129. Under DOL regulations, employers must apply for a TLC 75 to 90 days before the start date of work.[176] Employers must have a DOL-approved TLC before filing their Form I–129 request for H–2B workers with USCIS. Because the availability of H–2B visas is limited by statute and regulation, USCIS generally announces to the public when it has received a sufficient number I–129 petitions, and by extension H–2B beneficiaries, to exhaust the respective H–2B visa allocation.[177] USCIS rejects H–2B I–129 petitions that are received after USCIS has determined that a given allocation has been fully utilized. Functionally, this means that a subset of petitioners that would utilize H–2B workers given the chance may not be able to do so because the available visas have already been allocated before they can petition USCIS for the necessary workers. Using OFLC TLC data, Table 4 illustrates that since 2016, when employers of returning workers had greater flexibility in determining TLC-requested start dates, requested H–2B

[172] September 2022 Federal Open Market Committee (FOMC) projections for unemployment rate in 2023 ranged from 3.7 to 5.0% with central tendency more tightly clustered between 4.1 and 4.5%. *See https://www.federalreserve.gov/monetarypolicy/fomcprojtabl20220921.htm* (last accessed Oct. 19, 2022).

[173] USCIS analysis of OFLC Performance data. All data are for applications listed as having a case status of ''Certification'', ''Partial Certification'', ''Determination—Certification'', or ''Determination—Partial Certification''. Furthermore, data have been adjusted to a fiscal year using the employment being date provided on the TLC application. As such, counts differ from counts based on the Disclosure Files of OFLC h–2B Performance data. This adjustment was made so that the OFLC data more closely align to USCIS I–129 data.

[174] Averages are rounded to the nearest whole number.

[175] 16,500 visas for returning workers and 10,000 visas for filers with employment start dates May 15, 2023 or later.

[176] *See* 20 CFR 655.15(b).

[177] *See* USCIS, *Cap Reached for Additional Returning Worker H–2B Visas for Second Half of FY 2022, https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022* (May 31, 2022).

employment start dates have become increasingly concentrated in April.[178]

Table 4. DOL Certified Worker Demand for April Start Dates

Fiscal Year	Certified DOL Workers Requested	DOL Certified Workers with requested start dates in April	Percentage of DOL Certified Workers with requested start dates in April
2016	93,324	42,469	45.51%
2017	113,923	62,357	54.74%
2018	130,536	80,934	62.00%
2019	143,310	86,525	60.38%
2020	137,884	82,757	60.02%
2021	159,081	94,656	59.50%

Table 5. DOL Certified Worker Demand post-April Start Dates

Fiscal Year	Certified DOL Workers Requested	DOL Certified Workers with requested start dates after April	Percentage of DOL Certified Workers with requested start dates after April
2016	93,324	16,736	17.93%
2017	113,923	6,450	5.66%
2018	130,536	5,634	4.32%
2019	143,310	5,890	4.11%
2020	137,884	5,709	4.14%
2021	159,081	5,866	3.69%

This has given rise to the concern that this proliferation of April start dates has crowded out employers with labor needs later in the season (shown in Table 5). These data suggest that there may be structural barriers that preclude employers with later start dates from being able to utilize needed workers through the H–2B program. To illustrate, in FY 2016, a temporary statutory provision exempted certain H–2B visas from the cap that had been counted against the cap in any of the three prior fiscal years. Data from FY 2016 show a much higher incidence of employers that request relatively later start dates, suggesting that employers with later season needs would utilize the H–2B program but for the unavailability of visas. By making an allocation of visas available only to this subset of petitioners whose late season labor needs may have put them at a disadvantage in accessing H–2B workers in recent years, the Departments hope to both address this potentially inequitable situation and to take concrete steps towards collecting information through this rule to determine whether such a structural barrier exists. To that end, USCIS intends to analyze the results of this TFR as soon as feasible with the goal of determining whether those petitioners that utilize the late season filing allocation are materially different from those petitioners that have utilized fiscal year second half supplemental allocations for employment beginning on or after April 1, both via this TFR and via previously issued supplemental H–2B visa allocations.

The Secretaries have also determined that up to 20,000 of the 64,716 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti, and that these 20,000 workers will be exempt from the returning worker requirement. These visas will be available for the entirety of the fiscal year and do not have limitations regarding the requested start date of the H–2B beneficiaries' employment within the fiscal year. If the 20,000 visa limit has been reached, a petitioner may 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 will 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 will affect those employers that can establish that their business is suffering irreparable harm or will suffer impending irreparable harm

[178] Tables 4 and 5 contain USCIS analysis of OFLC Performance data. All data are for applications listed as having a case status of ''Certification'', ''Partial Certification'', ''Determination—Certification'', or ''Determination—Partial Certification.'' Furthermore, data have been adjusted to a fiscal year using the employment begin date provided on the TLC application. As such, counts differ from counts based on the Disclosure Files of OFLC H–2B Performance data. This adjustment was made so that the OFLC data more closely align to USCIS I–129 data.

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 historical trends and strong demand for the H–2B program (see Table 3), the Departments believe that it is reasonable to assume that the population of eligible petitioners for these additional 64,716 visas will generally be the same population as those employers that would already complete the steps to receive an approved TLC irrespective of this rule. One exception is the population of late season employers, described below.

This rule will 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 H–2B employer. These H–2B workers will continue to earn wages and gaining employers will continue to obtain necessary workers.

a. Population That Will File a Form I–129, Petition for a Nonimmigrant Worker

As discussed above, the population that will file a Form I–129 is necessarily limited to those business that have already established 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. Because the number of supplementary visas available is finite, USCIS has generally informed the public when the number of submitted Form I–129 petitions and, by extension, the number of respective beneficiaries is enough to exhaust the supply of supplemental visas.[179]

Table 6. I-129 Petitions per Supplemental H-2B Visa Allocation

Supplement	Supplement Amount	Total I-129 Petitions Received	Total I-129 Beneficiaries	Beneficiaries per I-129 petition
2017 Supplement	15,000	770	13,045	16.94
2018 Supplement	15,000	983	15,868	16.14
2019 Supplement	30,000	2,700	33,239	12.31
2021 Supplement[180]	22,000	2,180	31,274	14.35
2022 Supplement[181]	55,000	4,045	61,868	15.29
Average				**15.01**

Table 6 shows the total supplemental H–2B visa allocations issued by the Departments in each fiscal year since 2017,[182] including the total number of petitions and the total number of beneficiaries submitted under a supplement in each fiscal year. Using the historical average of 15.01 beneficiaries per petition for supplemental visas derived in Table 6, USCIS anticipates that 4,312 Forms I–129 will be submitted as a result of this temporary final rule.[183]

Using the estimates in Table 6, the Departments further estimate that the allocation of 10,000 visas for late season filers made by this TFR, addressing the disadvantage these employers face in accessing scarce H–2B visas, will result in 667 [184] additional DOL–ETA–9142–B requests assuming each late season visa requestor submits a TLC and Form I–129 for the historic average of 15.01 beneficiaries. The number of additional DOL–ETA–9142–B requests could be lower if some petitioners that would have filed for April 1 start dates in the absence of this TFR change their behavior to request late season workers as a result of this allocation. Alternatively, this number could be higher if late season filers are at a larger disadvantage in accessing H–2B workers than recent data suggests. The Departments commit to monitoring the utilization of these late season FY23 visas to determine if this carve-out promotes access, as anticipated, to employers with needs for workers later in the second half of the fiscal year but that have faced obstacles to accessing H–2B workers in the past.

USCIS recognizes that some employers will have to submit two I–129 Forms if they choose to request H–2B workers under both the returning worker and Northern Central American Countries/Haiti caps. At this time, USCIS cannot predict how many employers will choose to take advantage of more than one allocation, and therefore recognizes 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

[179] *See, e.g., https://www.uscis.gov/newsroom/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-second-half-of-fy-2022.*

[180] In Fiscal Year 2021, the Departments authorized a single supplemental allocation which was divided between returning workers and workers from specific countries. *See https://www.federalregister.gov/documents/2021/05/25/2021-11048/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2021-numerical-limitation-for-the*

[181] In Fiscal Year 2022, the Departments authorized two separate supplemental allocations of H–2B Visas, with each being further divided between returning workers and workers from specific countries. *See https://www.federalregister.gov/documents/2022/01/28/2022-01866/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2022-numerical-limitation-for-the; https://www.federalregister.gov/documents/2022/05/18/2022-10631/exercise-of-time-limited-authority-to-increase-the-numerical-limitation-for-second-half-of-fy-2022.*

[182] FY2020 was not included due to the suspension of additional H–2B visas to be released in 2020. DHS also noted that the Department of State had suspended routine visa services.

[183] Calculation for expected petitions. If each I–129 requests 15.01 workers, we'd expect to see 4,312 petitioners exhausting the 64,716 supplement allocated this year: 64,716/15.01 = 4,312 (rounded)

[184] Calculation for expected late season TLCs: 10,000 visas/15.01 beneficiaries per petition = 667 TLCs (rounded up).

Attorney or Accredited Representative, must accompany the Form I–129 submission.[185] Using data from FY 2018 to FY 2022, we estimate that a lawyer or accredited representative will file 45.84 percent of Form I–129 petitions. Table 7 shows the percentage of Form I–129 H–2B petitions that were accompanied by a Form G–28. Therefore, we estimate that in-house or outsourced lawyers will file 1,977 Forms I–129 and Forms G–28, and that human resources (HR) specialists will file 2,335 Forms I–129.[186]

Table 7. Form I-129 H-2B Petition Receipts That Were Accompanied by a Form G-28, FY 2018-2022.

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
2018	2,625	6,148	42.70%
2019	3,335	7,461	44.70%
2020	2,434	5,422	44.89%
2021	4,230	9,160	46.18%
2022	5,978	12,388	48.26%
2018 - 2022 Total	18,602	40,579	45.84%

Source: USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, Data queried 10/2022, TRK 10638

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.[187] Table 8 shows the percentage of Form I–129 H–2B petitions that were filed with a Form I–907. Using data from FY 2018 to FY 2022, USCIS estimates that approximately 93.57 percent of Form I–129 H–2B petitioners will file a Form I–907 requesting premium processing. Based on this historical data, USCIS estimates that 4,035 Forms I–907 will be filed with the Forms I–129 as a result of this rule.[188] Of these 4,035 premium processing requests, we estimate that in-house or outsourced lawyers will file 1,850 Forms I–907 and HR specialists or an equivalent occupation will file 2,185.[189]

[185] USCIS, *Filing Your Form G–28, https://www.uscis.gov/forms/filing-your-form-g-28.*

[186] Calculation: 4,312 estimated additional petitions * 45.84 percent of petitions filed by a lawyer = 1,977 (rounded) petitions filed by a lawyer.

Calculation: 4,312 estimated additional petitions—1,977 petitions filed by a lawyer = 2,335 petitions filed by an HR specialist.

[187] As explained above, DHS has elected to pause the receipt of premium processing requests until January 3, 2023. Due to the timing of the pause only a subset of the overall population of petitioners would be affected. DHS cannot quantify to what extent, if any, affected petitioners may modify their behavior in response to such pauses of premium processing. Therefore, DHS believes that analyzing historical trends in premium processing requests is the best method for estimating the population that may request premium processing due to this rule, and DHS recognizes that the estimates for costs and transfers made in this analysis could be on the higher end due to modified behavior as a result of the pause in premium processing.

[188] Calculation: 4,312 estimated additional petitions * 93.57 percent premium processing filing rate = 4,035 (rounded) additional Form I–907.

[189] Calculation: 4,035 additional Form I–907 * 45.84 percent of petitioners represented by a lawyer = 1,850 (rounded) additional Form I–907 filed by a lawyer.

Calculation: 4,035 additional Form I–907—1,850 additional Form I–907 filed by a lawyer = 2,185 additional Form I–907 filed by an HR specialist.

Table 8. 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
2018	5,986	6,148	97.36%
2019	7,227	7,461	96.86%
2020	4,341	5,422	80.06%
2021	8,650	9,160	94.43%
2022	11,767	12,388	94.99%
2018 - 2022 Total	37,971	40,579	93.57%

Source: USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, Data queried 10/2022, TRK 10638

d. Population That Files Form ETA–9142–B–CAA–7, 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, and Public Law 117–180

Petitioners seeking to take advantage of this FY 2023 H–2B supplemental visa cap will need to file a Form ETA–9142–B–CAA–7 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 4,312 petitions will need to be accompanied by Form ETA–9142–B–CAA–7 and petitioners filing these petitions and attestations will incur burdens complying with the evidentiary requirements.

e. Population of Late Season Employers That File Form ETA–9142–B, Application for Temporary Employment Certification

As Table 3 demonstrated, historical data strongly indicate that there will be sufficient demand such that only those petitioners that utilize the late season allocation of supplemental visas will need to file an additional Form ETA–9142–B. Assuming that the historical average of 15.01 beneficiaries per I–129 petition holds, 667 [190] petitioners will need to file Form ETA–9142–B as a direct result of the provision reserving 10,000 visas for beneficiaries of these employers. Given estimates from Table 7 of the percentage of Form I–129 H–2B petitions accompanied by a Form G–28, we estimate that in-house or outsourced lawyers will file 306 of these Forms ETA–9142–B, and that human resources (HR) specialists will file 361 Forms ETA–9142–B.[191]

f. Population That Must Undergo Additional Recruitment Activities

An employer that files Form ETA–9142B–CAA–7 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 relevant American Job Center (AJC), contacting former U.S. workers, contacting the bargaining representative or posting the job order in the places and manner described in 20 CFR 655.45(b) if there is no bargaining representative, contacting current U.S. workers, posting the job to the company's website if it maintains one and, if applicable, contacting the AFL–CIO.

The Departments assume that, due to the timing of the publication of the rule, only petitioners that file for H–2B workers under the first half supplemental allocation of 18,216 workers will incur burdens associated with this additional recruitment. By utilizing the average number of beneficiaries per Form I–129 petition established in Table 6, the Departments estimate that the population of petitioners that would need to fulfil the additional recruitment requirements would be 1,214.[192]

g. Population Affected by the Portability Provision

The population affected by this provision are nonimmigrants in H–2B status who are present in the United States and the employers with valid TLCs seeking to hire H–2B workers. We use the population of 66,000 H–2B workers authorized by statute and the 64,716 additional H–2B workers authorized by this rule as a proxy for the H–2B population that could be currently present in the United States.[193] USCIS uses the number of Forms I–129 filed for extension of stay due to change of

[190] Calculation for expected late season TLCs: 10,000 late season visas/15.01 beneficiaries per petition = 667 TLCs (rounded up).

[191] Calculation: 667 estimated additional requests * 45.84 percent of petitions filed by a lawyer (see Table 5) = 306 (rounded) ETA–9142–B requests filed by a lawyer.

Calculation: 667 estimated additional requests—306 requests filed by a lawyer = 361 requests filed by an HR specialist.

Calculation: 667 estimated additional requests—306 requests filed by a lawyer = 361 requests filed by an HR specialist.

[192] Calculation: 18,216 workers in the 1st half returning working supplemental allocation/15.01 workers per petitioner = 1,214 (rounded) petitioners required to undertake additional recruitment.

[193] 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, USCIS approved 735 requests for change of status to H–2B, and Customs and Border Protection (CBP) processed 1,341 crossings of visa-exempt H–2B workers. *See Characteristics of H–2B Nonagricultural Temporary Workers FY2021 Report to Congress, 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.

employer relative to the Forms I–129 filed for new employment from FY 2016 to FY 2020, the five years prior to the implementation of the first portability provision in a H–2B supplemental cap TFR, to estimate the baseline rate. We compare the average rate from FY 2016–FY 2020 to the average rate from FY 2021–FY 2022. Table 9 presents the number of Forms I–129 filed for extensions of stay due to change of employer and Forms I–129 filed for new employment for Fiscal year 2016 FY through FY 2020. The average rate of extension of stay due to change of employer compared to new employment is approximately 12.6 percent.

Table 9. 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 2016 – 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
2016	427	5,750	7.4%
2017	556	5,298	10.5%
2018	744	5,136	14.5%
2019	812	6,251	13.0%
2020	804	3,997	20.1%
FY 2016 -2020 Total	3,343	26,433	12.6%

USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, Data queried 10/2022, TRK 10638

In FY 2021, the first year a H–2B supplemental cap included a portability provision, there were 1,113 Forms I–129 filed for extension of stay due to change of employer compared to 7,207 Forms I–129 filed for new employment.[194] In FY 2022, there were 1,791 Forms I–129 filed for extension of stay due to change of employer compared to 9,233 Forms I–129 filed for new employment.[195] 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 17.7 percent.[196] This is above the 12.6 percent rate expected without a portability provision. 17.7 percent is our estimate of the rate expected in periods with a portability provision in the supplemental visa allocation. Using the 4,312 as our estimate for the number of Forms I–129 filed for H–2B new employment in FY 2023, we estimate that 543 Forms I–129 for extension of stay due to change of employer would be filed in absence of this provision.[197] With this portability provision, we estimate that 763 Forms I–129 for extension of stay due to change of employer would be filed.[198] This difference results in 220 additional Forms I–129 as a result of this provision.[199] As previously estimated, we expect that about 45.84 percent of Form I–129 petitions will be filed by an in-house or outsourced lawyer. Therefore, we expect that a lawyer will file 101 of these petitions and an HR specialist or equivalent occupation will file the remaining 119.[200] Previously in this analysis, we estimated that about 93.57 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 206 Forms I–907 will be filed.[201] We expect a lawyer to file 94 of those Forms I–907 and an HR specialist to file the remaining 112.[202]

[194] USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, Data queried 10/2022, TRK 10638.

[195] USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, Data queried 10/2022, TRK 10638.

[196] Calculation, Step 1: 1,113 Form I–129 petitions for extension of stay due to change of employer FY 2021 + 1,791 Form I–129 petitions for extension of stay due to change of employer in FY 2022 = 2,904 Form I–129 petitions filed extension of stay due to change of employer in portability provision years.

Calculation, Step 2: 7,207 Form I–129 petitions filed for new employment in FY 2021 + 9,233 Form I–129 petitions filed for new employment in FY 2022 = 16,440 Form I–129 petitions filed for new employment in portability provision years

Calculation, Step 3: 2,904 extension of stay due to change of employment petitions/16,440 new employment petitions = 17.7 percent rate of extension of stay due to change of employment to new employment (rounded).

[197] Calculation: 4,312 Form I–129 H–2B petitions filed for new employment * 12.6 percent = 543 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, no portability provision.

[198] Calculation: 4,312 Form I–129 H–2B petitions filed for new employment * 17.7 percent = 763 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, with a portability provision.

[199] Calculation: 763 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, with a portability provision—543 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, no portability provision = 220 Form I–129 H–2B petition increase as a result of portability provision.

[200] Calculation, Lawyers: 220 additional Form I–129 due to portability provision * 45.83 percent of Form I–129 for H–2B positions filed by an attorney or accredited representative = 101 (rounded) estimated Form I–129 filed by a lawyer.

Calculation, HR specialist: 220 additional Form I–129 due to portability provision—101 estimated Form I–129 filed by a lawyer = 119 estimated Form I–129 filed by an HR specialist.

[201] Calculation: 220 Form I–129 H–2B petitions * 93.57 percent premium processing filing rate = 206 (rounded) Forms I–907.

[202] Calculation, Lawyers: 206 Forms I–907 * 45.84 percent filed by an attorney or accredited representative = 94 (rounded) Forms I–907 filed by a lawyer.

Calculation, HR specialists: 206 Forms I–907—94 Forms I–907 filed by a lawyer = 112 Forms I–907 filed by an HR specialist.

h. Population Affected by the Audits

Under this time-limited FY 2023 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 will be 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, the Federal Government expects to conduct a total of 350 audits on employers that petition for H–2B workers under this TFR.[203]

i. Population Affected by Additional Scrutiny

DHS expects that petitioners that 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.[204] The data available here is for concluded cases. Table 10 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 violation occurred in the concluded case. During FY 2017–2021, on average 76 (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 152 petitioners will undergo additional scrutiny from USCIS.[205]

Table 10. 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	64
2018	90
2019	112
2020	74
2021	39
Five-year Average (rounded)	76

Source: USCIS analysis of DOL Wage and Hour Compliance Action Data

j. Population Expected To Familiarize Themselves With This Rule

DHS expects employers that have filed for TLCs to familiarize themselves with this rule. Table 3 shows that the average number of certifications over the last five FYs is 6,839. We use the TLC population, rather than the estimated 4,312 expected to file a Form I–129 petition, because employers that have applied for TLCs would need to familiarize themselves with the rule in order to determine whether or not to subsequently file a Form I–129 petition.

We expect a HR specialist, in-house lawyer, or outsourced lawyer will perform familiarization with the rule at the same rate as petitioners that file a Form G–28. As discussed above, an estimated 45.84 percent of petitioners are submitted by lawyers. Therefore, we estimate that 3,135 lawyers and 3,704 HR specialists will incur familiarization costs.[206]

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 the opportunity cost of time to complete and submit the form.[207] The estimated time to complete and file Form I–129 for H–2B classification is 4.34 hours.[208] A U.S. employer, a U.S. agent, or a foreign employer filing through the U.S. agent must file the petition. DHS estimates that an in-house or outsourced lawyer will file 45.84 percent of Form I–129 H–2B petitions, and an HR specialist or equivalent occupation will file the remainder (54.16 percent). 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.[209] 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.[210] Using the most recent BLS data, DHS calculated a benefits-to-wage

[203] These 350 audits are separate and distinct from WHD's investigations pursuant to its existing enforcement authority.

[204] Available at *https://enforcedata.dol.gov/views/data_catalogs.php* (accessed October 5, 2022).

[205] 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 152 to be a reasonable estimate of the number of petitioners that will undergo additional scrutiny.

[206] Calculation for lawyers: 6,839 estimated applicants * 45.84 percent represents by a lawyer = 3,135 (rounded) represented by a lawyer.

Calculation for HR specialists: 6,839 approved, pending, and projected applicants—3,135 represented by a lawyer = 3,704 represented by an HR specialist.

[207] Filing fees are not considered costs to society. These fees have been accounted for as a transfer from petitioners to USCIS.

[208] 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 Oct. 17, 2022).

[209] 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 Oct. 17, 2022).

[210] 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 Oct. 17, 2022).

multiplier of 1.45 to estimate the full wages to include benefits such as paid leave, insurance, and retirement.[211] 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.[212] In addition, DHS recognizes that an entity may not have an in-house lawyer and may 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.[213] DHS estimates the total compensation for an outsourced lawyer is $179.28 per hour.[214] If a lawyer submits Form I–129 on behalf of the petitioner, Form G–28 must accompany the Form I–129 petition.[215] DHS estimates the time burden to complete and submit Form G–28 for a lawyer is 50 minutes (0.83 hour, rounded).[216] 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.[217] 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.[218]

a. Transfers

i. Transfers From Petitioners to the Government

The provisions of this rule require the submission of a Form I–129 H–2B petition. The transfers for this form include the filing costs to 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.[219] These filing fees are not a cost to society or an expenditure of new resources but a transfer from the petitioner to USCIS in exchange for agency services. DHS anticipates that petitioners will file 4,312 Forms I–129 due to the rule's supplemental visa allocation and an additional 220 Forms I–129 due to the rule's portability provision. The total value of transfers from petitioners to the Government for Form I–129 filings due to the rule is $2,764,520.[220]

Additionally, 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. Based upon historical trends, USCIS expects that 93.57 percent of petitioners will file a Form I–907 in addition to their Form I–129. Applying that rate to the expected number of Forms I–129 would result in 4,241 Forms I–907 filed due to the rule.[221] Transfers from petitioners to the Government related to the filing of Forms I–907 as a result of the rule are $6,361,500.[222] Total transfers from petitioners to the Government are $9,126,020.[223]

b. Cost to Petitioners

As mentioned in *Section 3,* the estimated population impacted by this rule is 4,312 eligible petitioners that are projected to apply for the additional 64,716 H–2B visas, with 20,000 of those 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.

ii. Costs to Petitioners To File Form I–129 and Form G–28

As discussed above, DHS estimates that HR specialists will file an additional 2,335 petitions using Form I–129 and lawyers will file an additional 1,977 petitions 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 $499,597 (rounded).[224] DHS estimates the total cost to file Form I–129 petitions and Form G–28 if filed by lawyers will range from $1,062,796 (rounded) if only in-house lawyers file these forms, to $1,832,442 (rounded) if only outsourced lawyers file them.[225] Therefore, the estimated total cost to file Form I–129 and Form G–28 range from $1,562,393 and $2,332,039.[226]

[211] Calculation: $41.03 mean Total Employee Compensation per hour for civilian workers/$28.31 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_09202022.pdf* (accessed Oct. 17, 2022).

[212] 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).

[213] 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: *Safe Harbor Procedures for Employers Who Receive a No-Match Letter: Clarification; Final Regulatory Flexibility Analysis,* 73 FR 63843 (Oct. 28, 2008), available at *https://www.regulations.gov/document/ICEB-2006-0004-0921* (accessed Oct. 25, 2022). *See also 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), available at *https://www.regulations.gov/document/DHS-2022-0010-0001* (accessed Oct. 26, 2022).

[214] Calculation, Outsourced Lawyer: $71.71 mean hourly wage * 2.5 benefits-to-wage multiplier = $179.28 hourly total compensation (hourly opportunity cost of time).

[215] USCIS, Filing Your Form G–28, *https://www.uscis.gov/forms/filing-your-form-g-28* (accessed October 17, 2022).

[216] 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).

[217] Calculation: 0.83 hour to file Form G–28 + 4.34 hours to file Form I–129 = 5.17 hours to file both forms.

[218] 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.

[219] *See* Form I–129 instructions at *https://www.uscis.gov/sites/default/files/document/forms/i-129instr.pdf* (accessed Oct. 17, 2022). *See also* 8 U.S.C. 1184(c)(13).

[220] Calculation: (4,312 petitions + 220 petitions) * $610 per petition = $2,764,520.

[221] Calculation (4,312 petitions + 220 petitions) * 93.57 Form I–907 rate = 4,241 Forms I–907.

[222] Calculation: $1,500 per petition * 4,241 Forms I–907 = $6,361,500.

[223] Calculation: $2,764,520 + $6,361,500 = $9,126,020.

[224] Calculation, HR specialist: $213.96 cost per petition * 2,335 Form I–129 = $499,597 (rounded) total cost.

[225] Calculation, In-house Lawyer: $537.58 cost per petition * 1,977 Form I–129 and Form G–28 = $1,062,796 (rounded) total cost.

Calculation, Outsourced Lawyer: $926.88 cost per petition * 1,977 Form I–129 and Form G–28 = $1,832,442 (rounded) total cost.

[226] Calculation: $499,597 total cost of Form I–129 filed by HR specialists + $1,062,796 total cost of

iii. 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).[227] [228] 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.[229]

As discussed above, DHS estimates that HR specialists will file an additional 2,185 Form I–907 and lawyers will file an additional 1,850 Form I–907.[230] DHS estimates the total cost of Form I–907 filed by HR specialists is about $62,469 (rounded).[231] DHS estimates the total cost to file Form I–907 filed by lawyers range from about $111,574 (rounded) for only in-house lawyers, to $192,363 (rounded) for only outsourced lawyers.[232] The estimated total cost to file Form I–907 range from $174,043 and $254,832.[233]

iv. Cost to Late Season Employers Filing Form ETA–9142–B

In addition to the costs for employers projected to request TLCs irrespective of this rule, the population of 667 late season employers that would not otherwise request H–2B workers will file Form ETA–9142–B as a precondition to utilizing the late season allocation of H–2B visas made available by the rule. There is no filing fee for Form ETA–9142–B, and the time burden for completing the form, including Appendix A, Appendix B, Appendix C, Appendix D, and record keeping, is 2 hours and 10 minutes (2.17 hours).[234] DHS estimates the total cost of Form ETA–9142–B filed by HR specialists is about $38,620 (rounded).[235] DHS estimates the total cost to file Form ETA–9142–B by lawyers range from about $69,045 (rounded) for only in-house lawyers, to $119,046 (rounded) for only outsourced lawyers.[236] The estimated total cost to file Form ETA–9142–B range from $107,665 and $157,666.

v. Cost To File Form ETA–9142–B–CAA–7

Form ETA–9142–B–CAA–7 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 hours, 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 requirements is approximately $49.30.[237] Employers are also required to send OFLC and AFL–CIO the ETA case number when filing a petition with DHS. DOL estimates the time burden for this task is 10 minutes (0.17 hours) for an HR specialist. The opportunity cost of time for an HR specialist to send OFLC and AFL the ETA case number is approximately $8.38.[238] The total opportunity cost of time for filing Form ETA–9142–B–CAA–7 and emailing the ETA case number to both OFLC and the AFL–CIO is $57.68.[239]

Additionally, the form requires that petitioners assess, prepare a detailed written statement, 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,[240] and the estimated hourly total compensation for a financial analyst is $71.82.[241] 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.[242]

As discussed previously, DHS believes that the 4,312 Form I–129 petitions required to exhaust the number of supplemental visas made available in this rule represents the number of potential employers that will request to employ H–2B workers under this rule. This number of petitions is a reasonable proxy for the number of employers that may need to review and sign the attestation. Using this estimate

Form I–129 and Form G–28 filed by in-house lawyers = $1,562,393 estimated total costs to file Form I–129 and G–28.

Calculation: $499,597 total cost of Form I–129 filed by HR specialists + $1,832,442 total cost of Form I–129 and G–28 filed by outsourced lawyers = $2,332,039 estimated total costs to file Form I–129 and G–28.

[227] The filing fee is a transfer from the petitioner requesting premium processing and proxy for the total costs to USCIS.

[228] See Form I–907 instructions at *https://www.uscis.gov/i-907* (accessed October 17, 2022).

Calculation: 35 minutes/60 minutes per hour = 0.58 (rounded) hour.

[229] 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.

[230] As explained above, DHS has elected to pause the receipt of premium processing requests until January 3, 2023. Due to the timing of the pause only a subset of the overall population of petitioners would be affected. DHS cannot quantify to what extent, if any, affected petitioners may modify their behavior in response to such pauses of premium processing. Therefore, DHS believes that analyzing historical trends in premium processing requests is the best method for estimating the population that may request premium processing due to this rule, and DHS recognizes that the estimates for costs and transfers made in this analysis could be on the higher end due to modified behavior as a result of the pause in premium processing.

[231] Calculation, HR specialist: $28.59 opportunity cost of time per request * 2,185 Form I–907 = $62,469 (rounded) total cost of Form I–907 filed by HR specialists.

[232] Calculation, In-house Lawyer Form I–907: $60.31 hourly opportunity cost of time * 1,850 applications = $111,574.

Calculation, Outsourced Lawyer Form I–907: $103.98 hourly opportunity cost of time * 1,850 applications = $192,363.

[233] Calculation: $62,469 total cost of Form I–907 filed by HR specialists + $111,574 total cost of Form I–907 filed by in-house lawyers = $174,043 estimated total costs to file Form I–907.

Calculation: $62,469 total cost of Form I–129 filed by HR specialists + $192,363 total cost of Form I–907 filed by outsourced lawyers = $254,832 estimated total costs to file Form I–907.

[234] The 130 minute burden estimate is as follows: 9142–B—55 minutes, Appendix A—15 minutes, Appendix B—15 minutes, Appendix C—20 minutes, Appendix D—10 minutes, Record Keeping—15 minutes. *See* Form ETA–9142–B at *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA_Form_9142B.pdf* (last accessed Oct. 24, 2022).

[235] Calculation, HR specialist: $49.30 per hour * 2.17 hours * 361 Form ETA–9142–B = $38,620 (rounded) total cost of Form ETA–9142–B filed by HR specialists.

[236] Calculation, In-house Lawyer Form ETA–9142–B: $103.98 per hour * 2.17 hours * 306 applications = $69,045 (rounded). Calculation, Outsourced Lawyer Form ETA–9142–B: $179.28 per hour * 2.17 hours * 306 applications = $119,046 (rounded).

[237] 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.

[238] Calculation: $49.30 hourly opportunity cost of time * 0.17 hours to send OFLC and AFL–CIO the ETA case number = $8.38 (rounded).

[239] Calculation: $49.30 + $8.38 = $57.68.

[240] *See* 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 Oct. 17, 2022).

[241] Calculation: $49.53 mean hourly wage for a financial analyst * 1.45 benefits-to-wage multiplier = $71.82 (rounded).

[242] Calculation: $71.82 estimated total compensation for a financial analyst * 5 hours to meet the requirements of the irreparable harm standard = $359.10.

for the total number of certifications, we estimate the opportunity cost of time for completing the attestation and sending the ETA case number to OFLC and AFL–CIO for HR specialists is approximately $248,716 (rounded) and for financial analysts is about $1,548,439 (rounded).[243]

The estimated total cost to file Form ETA–9142–B–CAA–7 and comply with the attestation is approximately 1,797,155.[244]

vi. Cost To Conduct Recruitment

An employer that files Form ETA–9142B–CAA–7 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 (1) placing a new job order with the State Workforce Agency (SWA), (2) contacting the relevant American Job Center (AJC), (3) contacting laid-off workers, (4) contacting current employees for referrals, (5) placing the available job opportunity on the employer's website if the employer maintains a website for its business, and (6) contacting the AFL–CIO if applicable and providing a copy of the job order to the bargaining representative for its employees in the occupation and area of intended employment.

Specifically, during the period the SWA is actively circulating the job order, employers must also 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.

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 disclose the terms of the job order to these workers as required by the rule. Employers are also required to contact current employees regarding available job opportunities for referrals.

Employers are required to post the available job opportunity on the employer's website if the employer maintains a website for its business.

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 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).

DOL estimates the average expected time burden for activities related to conducting recruitment is 4 hours.[245] Assuming this work will be done by an HR specialist or an equivalent occupation, the estimated cost to each petitioner is approximately $197.20.[246] Using 1,214 as the estimated number of petitioners required to undergo additional recruitment activities, the estimated total cost of this provision is approximately $239,401 (rounded).[247]

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.

vii. 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.[248] The estimated total cost to petitioners to print copies is approximately $1,294 (rounded).[249] Employers may incur higher print costs if they have to print notifications in more than two languages.

viii. 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 estimate that approximately 220 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. In addition, if a petitioner desires premium processing, the petitioner must file Form I–907 and pay the associated fee. We expect an HR specialist, in-house lawyer, or an outsourced lawyer will perform these actions. Moreover, as previously estimated, we expect that an in-house or outsourced lawyer will file about 45.84 percent of these Form I–129 petitions. Therefore, we expect that a lawyer will file 101 of these petitions and an HR specialist or equivalent occupation will file the remaining 119. As previously discussed, the opportunity cost of time to file a Form

[243] Calculations, HR specialists: $57.68 opportunity cost of time to comply with attestation requirements and to send the ETA case number to OFLC and AFL–CIO * 4,312 estimated additional petitions = $248,716 (rounded) total cost to comply with attestation requirements.

Calculation, Financial Analysts: $359.10 opportunity cost of time to comply with attestation requirements * 4,312 estimated additional petitions = $1,548,439 (rounded) to comply with attestation requirements

[244] Calculation: $248,716 total cost for HR specialist to comply with attestation requirement and to send the ETA case number to OFLC and AFL–CIO + $1,548,439 total cost for financial analysts to comply with attestation requirements = $1,797,155 total cost to comply with attestation requirements.

[245] 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, 0.5 hours for contacting current employees for referrals, 0.5 hours for placing the available job opportunity on the employer's website, 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 customarily unionized, for a total time burden of 4 hours.

[246] Calculation: $49.30 hourly opportunity cost of time for an HR specialist * 4 hours to conduct additional recruitment = $197.20 per petitioner cost to conduct additional recruitment.

[247] Calculation: 1,214 estimated number of petitioners subject to additional recruitment requirements * $197.20 per petitioner cost to conduct additional recruitment = $239,401 (rounded) total cost to conduct additional recruitment.

[248] *See https://www.montgomerycountymd.gov/Library/services/computerhelp.html* (accessed October 17, 2022). Cost to make black and white copies.

[249] Calculation: $0.15 per posting * 4,312 estimated number of petitioners * 2 copies = $1,294 (rounded) cost of postings.

I–129 H–2B petition is $213.96 for an HR specialist; and the opportunity cost of time to file a Form I–129 H–2B petition with accompanying Form G–28 is $537.58 for an in-house lawyer and $926.88 for an outsourced lawyer. Therefore, we estimate the cost of the additional Forms I–129 from the portability provision for HR specialists is $25,461.[250] The estimated cost of the additional Forms I–129 accompanied by Forms G–28 from the portability provision for lawyers is $54,296 if filed by in-house lawyers and $93,615 if filed by outsourced lawyers.[251]

Previously in this analysis, we estimated that about 93.57 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 206 Forms I–907 will be filed.[252] We expect a lawyer will file 94 of those Forms I–907 and an HR specialist or equivalent occupation will file the remaining 112.[253] As previously discussed, the estimated opportunity cost of time to file a Form I–907 is $28.59 for an HR specialist; and the estimated opportunity cost of time to file a Form I–907 is approximately $60.31 for an in-house lawyer and $103.98 for an outsourced lawyer. The estimated total cost of the additional Forms I–907 if HR specialists file is $3,202.[254] The estimated total cost of the additional Forms I–907 is $5,669 if filed by in-house lawyers and $9,774 if filed by outsourced lawyers.[255]

The estimated total cost of this provision ranges from $88,628 to $132,052 depending on what share of the forms are filed by in-house or outsourced lawyers.[256]

ix. Cost of Audits to Petitioners

As discussed above, 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. We estimate that the expected time burden to comply with audits conducted by DHS and DOL's Office of Foreign Labor Certification is 12 hours.[257] We expect that an HR specialist or equivalent occupation will provide these documents. Given an hourly opportunity cost of time of $49.30, the estimated cost of complying with audits is $591.60 per audited employer.[258] Therefore, the total estimated cost to employers to comply with audits is $207,060.[259]

x. 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 152 petitioners will need to print 500 pages of documents and mail this to USCIS. We expect these documents to be able to fit in a Priority Mail Medium Flat Rate box, which costs $17.05.[260] We estimate the costs of printing at $0.15 per page and the cost of printing 500 at $75.00.[261] The estimated cost for an employer to print and ship evidence to USCIS is $92.05.[262] With an estimated 152 petitioners expected to print and ship evidence, the total estimated costs for printing and shipping evidence is $13,992.[263]

We also expect petitioners 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 the $49.30 hourly opportunity cost of time for HR specialist, we estimate the opportunity cost of time for each petitioner is $49.30.[264] With an estimated 152 petitioners expected to print and ship evidence, the total estimated opportunity cost of time to print and ship evidence is $7,494.[265]

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 $21,486.[266]

xi. Familiarization Costs

We expect that petitioners or their representatives will need to read and understand this rule if they seek to take advantage of the supplemental cap. As a result, we expect this rule will impose one-time familiarization costs associated with reading and understanding this rule. As shown previously, we estimate that approximately 6,839 petitioners may take advantage of the provisions of this rule, and that a lawyer will represent 3,135 of these petitioners and an HR specialist or equivalent occupation will represent 3,704.

To estimate the costs 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.[267] This rule has approximately 66,000 words. Using a reading speed of 238 words per minute, DHS estimates it will take

[250] Calculation, HR specialist: $213.96 estimated cost to file a Form I–129 H–2B petition * 119 petitions = $25,461 (rounded).

[251] Calculation, In-house Lawyer: $537.58 estimated cost to file a Form I–129 H–2B petition and accompanying Form G–28 * 101 petitions = $54,296 (rounded).

Calculation, Outsourced Lawyer: $926.88 estimated cost to file a Form I–129 H–2B petition and accompanying Form G–28 * 101 petitions = $93,615 (rounded).

[252] Calculation: 220 estimated additional Form I–129 H–2B petitions * 93.57 percent accompanied by Form I–907 = 206 (rounded) additional Form I–907.

[253] Calculation, Lawyers: 206 additional Form I–907 * 45.84 percent = 94 (rounded) Form I–907 filed by a lawyer.

Calculation, HR specialists: 206 Form I–907—94 Form I–907 filed by a lawyer = 112 Form I–907 filed by an HR specialist.

[254] Calculation, HR specialist: $28.59 to file a Form I–907 * 112 forms = $3,202 (rounded).

[255] Calculation, In-house lawyer: $60.31 to file a Form I–907 * 94 forms = $5,669 (rounded).

Calculation for an outsourced lawyer: $103.98 to file a Form I–907 * 94 forms = $9,774 (rounded).

[256] Calculation for HR specialists and in-house lawyers: $25,461 for HR specialists to file Form I–129 H–2B petitions + $54,296 for in-house lawyers to file Form I–129 and the accompanying Form G–28 + $3,202 for HR specialists to file Form I–907 + $5,669 for in-house lawyers to file Form I–907 = $88,628.

Calculation for HR specialists and outsourced lawyers: $25,461 for HR specialists to file Form I–129 H–2B petitions + $93,615 for outsourced lawyers to file Form I–129 and the accompanying Form G–28 + $3,202 for HR specialists to file Form I–907 + $9,774 for outsourced lawyers to file Form I–907 = $132,052.

[257] The number in hours for audits was provided by the USCIS, Service Center Operations.

[258] Calculation: $49.30 hourly opportunity cost of time for an HR specialist * 12 hours to comply with an audit = $591.60 per audited employer.

[259] Calculation: 350 audited employers * $591.60 opportunity cost of time to comply with an audit = $207,060.

[260] USPS, Priority Mail, *https://www.usps.com/ship/priority-mail.htm* (accessed October 17, 2022).

[261] Calculation: 500 pages * $0.15 per page = $75.00 in printing costs.

[262] Calculation: $75.00 in printing costs + $17.05 in shipping costs = $92.05 to print and ship evidence.

[263] Calculation: 152 petitioners * $92.05 to print and ship evidence = $13,992 total printing and shipping costs.

[264] 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.

[265] Calculation: 152 petitioners * $49.30 opportunity cost of time per petitioner = $7,494 total estimated opportunity cost of time to print and ship evidence.

[266] Calculation: $13,992 total printing and shipping costs + $7,494 total opportunity cost of time = $21,486 total estimated cost of additional scrutiny.

[267] 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.

approximately 4.6 hours to read and understand this rule.[268]

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.[269] The estimated total opportunity cost of time for 3,704 HR specialists to familiarize themselves with this rule is approximately $839,993.[270] The estimated total opportunity cost of time for 3,135 lawyers to familiarize themselves with this rule is approximately $1,499,502 if they are all in-house lawyers and $2,585,403 if they are all outsourced lawyers.[271] Accordingly, the estimated total opportunity costs of time for petitioners' representatives to familiarize themselves with this rule ranges from $2,339,495 to $3,425,396.[272]

xii. Estimated Total Costs to Petitioners

In sum, the monetized costs of this rule come from time spent filing and complying with Form I–129, Form G–28, Form I–907, and Form ETA–9142–B–CAA–7, as well as contacting and refreshing recruitment efforts, posting notifications, time spent filing to obtain a porting worker, and complying with audits. The estimated total cost to file Form I–129 and an accompanying Form G–28 ranges from $1,562,393 to $2,332,039, depending on the filer. The estimated total cost of filing Form I–907 ranges from $174,043 to $254,832, depending on the filer. The estimated cost for late season employers to file Form ETA–9142–B ranges from $107,665 to $157,666 depending on the filer. The estimated total cost of filing and complying with Form ETA–9142–B–CAA–7 is $1,797,155. The estimated total cost of conducting additional recruitment is $850,326. The estimated total cost of the COVID–19 protection provision is approximately $1,294. The estimated cost of the portability provision ranges from $88,628 to $132,052, 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 $2,339,495 to $3,425,396, depending on the filer. The estimated total cost of additional scrutiny is $21,486. The total estimated cost to petitioners ranges from $6,538,620 to $8,568,381, depending on the filer.[273]

c. Cost to the Federal Government

USCIS will incur costs related to the adjudication of petitions as a result of this TFR. DHS expects USCIS to recover these costs by the fees associated with the forms, which have been accounted for as a transfer from petitioners to USCIS and serve as a proxy for the costs to the agency. The total filing fees associated with Form I–129 H–2B petitions are $2,764,520,[274] and the total filing fees associated with premium processing are $6,361,500.[275] Total transfers from petitioners to the Government are $9,126,020.[276]

The INA provides USCIS with the authority to collect 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.[277] DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. USCIS establishes fees 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 charged. Consequently, since USCIS immigration fees are primarily 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.[278] While fees fund most USCIS activities and appropriations fund DOL, we expect both agencies will be able to shift resources to conduct these audits without incurring additional costs. As previously mentioned, the agencies will conduct a total of 350 audits, and we expect each audit to take 12 hours. This results in a total time burden of 4,200 hours.[279] 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.[280] To estimate the total hourly compensation for these positions, we multiply the hourly wage ($58.01) by the Federal benefits to wage multiplier of 1.37.[281] This results in an hourly opportunity cost of time of $79.47 for GS–13 Step 5 Federal employees in the

[268] Calculation, Step 1: roughly 66,000 words/238 words per minute = 277 (rounded) minutes.

Calculation, Step 2: 277 minutes/60 minutes per hour = 4.6 (rounded) hours.

[269] Calculation, HR Specialists: $49.30 estimated hourly total compensation for an HR specialist * 4.6 hours to read and become familiar with the rule = $226.78 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 * 4.6 hours to read and become familiar with the rule = $478.31 (rounded) opportunity cost of time for an in-house lawyer to read and understand the rule.

Calculation, Outsourced lawyer: $179.2 estimated hourly total compensation for an outsourced lawyer * 4.6 hours to read and become familiar with the rule = $824.69 (rounded) opportunity cost of time for an outsourced lawyer to read and understand the rule.

[270] Calculation, HR specialists: $226.78 opportunity cost of time * 3,704 = $839,993 (rounded).

[271] Calculation for in-house lawyers: $478.31 opportunity cost of * 3,135 = $1,499,502 (rounded).

Calculation for outsourced lawyers: $824.69 opportunity cost of time * 3,135 = $2,585,403 (rounded).

[272] Calculation: $839,993 + $1,499,502 = $2,339,495.

Calculation: $839,993 + $2,585,403 = $3,425,396.

[273] Calculation of lower range: $1,562,393 + $174,043 + $107,665 + $1,797,155 + $239,401 + $1,294 + $88,628 + $207,060 + $2,339,495 + $21,486 = $6,538,620.

Calculation of upper range: $2,332,039 + $254,832 + $157,666 + $1,797,155 + $239,401 + $1,294 + $132,052 + $207,060 + $3,425,396 + $21,486 = $8,568,381.

[274] Calculation: (4,312 + 220 Form I–129 petitions) * $610 per petition = $2,764,520

[275] Calculation: (4,035 + 206 Forms I–907) * $1,500 per form = $6,361,500.

[276] Calculation: $2,764,520 + $6,361,500 = $9,126,020.

[277] *See* INA section 286(m), 8 U.S.C. 1356(m).

[278] These audits are distinct from the WHD's authority to perform investigations regarding employers' compliance with the requirements of the H–2B program.

[279] Calculation: 12 hours to conduct an audit * 350 audits = 4,200 total hours to conduct audits.

[280] *See* U.S. Office of Personnel Management, Pay and Leave, Salaries and Wages, For the Locality Pay area of Washington-Baltimore-Arlington, DC-MD-A-WV-PA, 2022, Hourly Basic Rate, *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf* (last accessed October 17, 2022).

[281] 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. *See https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2021_Budget_Overview.pdf* (accessed October 17, 2022).

Washington, DC locality pay area.[282] The total opportunity costs of time for Federal workers to conduct audits is estimated to be $333,774.[283]

This final rule implements changes to the DOL's mechanisms to receive complaints from advocates, unions, and other stakeholders about jobs posted on *seasonaljobs.gov*. DOL expects that the changes to the DOL's mechanisms to receive complaints may result in some additional costs to DOL. However, DOL is unable to quantify such costs due to lack of data.

d. 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 will assist employers that are suffering irreparable harm or will suffer impending irreparable harm.

e. 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 help ensure 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.

U.S. workers will also benefit from this rule 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 nonimmigrant worker does not displace a U.S. worker who is willing and able to fill the position. 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.[284] 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 the Consumer Price Index for All Urban Consumers (CPI–U)),[285] and this

[282] 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.

[283] 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.

[284] *See* 2 U.S.C. 1532(a)

[285] *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-202209.pdf*** (last

Continued

rulemaking does not contain such a federal mandate as the term is defined under UMRA.[286] 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 2023, based on the Secretary of Homeland Security's determination, in consultation with the Secretary of Labor, consistent with the FY 2022 Omnibus and Public Law 117–180. 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 temporary final 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 64,716 visas for noncitizens who may receive H–2B nonimmigrant visas, of which 44,716 are for returning workers (persons issued H–2B visas or were otherwise granted H–2B status in Fiscal Years 2020, 2021, or 2022). 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, 2023 for the cap increase, and at the end of January 24, 2024 for the portability provision. DHS believes amending applicable regulations to authorize up to an additional 64,716 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 331,893,745 (maximum temporary increase of 0.0195 percent).[287]

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 a ''major rule'' as defined by the Congressional Review Act (''CRA'') in 5 U.S.C. 804(2)(a) and is subject to both the CRA's reporting requirement and the delayed effective date requirement, pursuant to 5 U.S.C. 801. However, as stated in section IV.A of this rule, the Departments have good cause to forgo APA's requirements for notice and public comment (and a delayed effective date), pursuant to 5 U.S.C. 553. Therefore, the Departments also have good cause to forgo the CRA's 60-day delayed effective date requirement, pursuant to 5 U.S.C. 808(2). This rule is effective upon publication. DHS has complied with the CRA's reporting requirements and has sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

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, and Public Law 117–180, Form ETA–9142–B–CAA–7

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

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visited Nov. 4, 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.

[286] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

[287] *See* U.S. Census Bureau Quick Facts, available at *https://www.census.gov/quickfacts/US* (accessed October, 26 2022).

Calculation: 64,716 additional visas/331,893,745 million people in the United States = 0.0195 (rounded) percent temporary increase in the population.

OMB and obtained approval of a new form, Form ETA–9142B–CAA–7, using emergency clearance procedures outlined at 5 CFR 1320.13. The Departments note that while DOL submitted the ICR, both DHS and DOL will use the information provided by employers in response to this information collection.

Petitioners will use the new Form ETA–9142B–CAA–7 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 20,000 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 pursuant to 5 CFR 1320.13, DOL is seeking comments on this information collection pursuant to 44 U.S.C. 3506(c)(2)(A). Comments on the information collection must be received by February 13, 2023. 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 64,716 visas for FY 2023 for certain H–2B workers, 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 2020, 2021, or 2022, unless the worker is one of the 20,000 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, and Public Law 117–180.*

Agency Form Number: Form ETA–9142–B–CAA–7.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 4,312.

Average Responses per Year per Respondent: 1.

Total Estimated Number of Responses: 4,312.

Average Time per Response: 10.17 hours per application.

Total Estimated Annual Time Burden: 43,853 hours.

Total Estimated Other Costs Burden: $2,647,484

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 as extended by Public Law 117–180 (which expires on December 16, 2022). However, USCIS estimates that this temporary rule may result in approximately 4,035 additional filings of Form I–907 in fiscal year 2022.[288]

[288] As explained above, DHS has elected to pause the receipt of premium processing requests until January 3, 2023. Due to the timing of the pause only a subset of the overall population of petitioners would be affected. DHS cannot quantify to what extent, if any, affected petitioners may modify their behavior in response to such pauses of premium processing. Therefore, DHS believes that analyzing historical trends in premium processing requests is the best method for estimating the population that may request premium processing due to this rule, and DHS recognizes that the estimates made in this analysis could be on the higher end due to modified

Continued

The current OMB-approved estimate of the number of annual respondents filing a Form I–907 is 815,773. 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 December 15, 2022 through December 15, 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 December 15, 2022 through December 15, 2025, amend § 214.2 by:

■ a. Amending Table 3 to paragraph (h) by adding row (29); and

■ b. Adding paragraphs (h)(6)(xiii) and (h)(29).

The additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

TABLE 3 TO PARAGRAPH (h)—PARAGRAPH CONTENTS

* * * * * * *
(29) Change of employers and portability for H–2B workers (January 25, 2023 through January 24, 2024).

* * * * *

(6) * * *

(xiii) *Special requirements for additional cap allocations under Public Laws 117–103 and 117–180*—(A) *Public Law 117–103 and section 101(6) of Division A of Public Law 117–180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023*—(*1*) *Supplemental allocation for returning workers.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2023 only, the Secretary has authorized up to an additional 64,716 visas for aliens who may receive H–2B nonimmigrant visas pursuant to section 204 of Division O of Public Law 117–103, the Consolidated Appropriations Act, 2022, and section 101(6) of Division A of Public Law 117–180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023. An alien may be eligible to receive an H–2B nonimmigrant visa under this paragraph (h)(6)(xiii)(A)(*1*) if she or he is a returning worker. The term ''returning worker'' under this paragraph (h)(6)(xiii)(A)(*1*) means a person who was issued an H–2B visa or was otherwise granted H–2B status in fiscal year 2020, 2021, or 2022. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(xiii)(A)(*1*). The additional H–2B visas authorized under this paragraph will be made available to returning workers as follows:

(*i*) Up to an additional 18,216 visas for aliens who may receive H–2B nonimmigrant visas based on petitions requesting FY 2023 employment start dates on or before March 31, 2023.

(*ii*) Up to an additional 16,500 visas for aliens who may receive H–2B nonimmigrant visas based on petitions requesting FY 2023 employment start dates from April 1, 2023 to May 14, 2023.

(*iii*) Up to an additional 10,000 visas available for aliens with employment start dates from May 15, 2023 to September 30, 2023.

(*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 2023 only, and in addition to the allocation described in paragraph (h)(6)(xiii)(A)(*1*) of this section, the Secretary has authorized up to an additional 20,000 visas for aliens who are nationals of Guatemala, El Salvador, Honduras (Northern Central American countries), or Haiti, who may receive H–2B nonimmigrant visas pursuant section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103, and section 101(6) of Division A of Public Law 117–180 Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, based on petitions with FY 2023 employment start dates. Such workers are not subject to the returning worker requirement in paragraph (h)(6)(xiii)(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)(xiii)(A)(*1*) and

behavior as a result of the pause in premium processing.

must declare that they are requesting these workers in the attestation required under 20 CFR 655.67(a)(1). A petition requesting returning workers under paragraph (h)(6)(xiii)(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)(xiii)(A)(*2*).

(B) *Eligibility.* In order to file a petition with USCIS under this paragraph (h)(6)(xiii), 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)(xiii);

(*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 2020, 2021, or 2022, unless the H–2B worker is a national of Guatemala, El Salvador, Honduras, or Haiti who is counted towards the 20,000 cap described in paragraph (h)(6)(xiii)(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 and 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)(xiii)(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)(xiii)(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 2023 supplemental allocations outlined in paragraph (h)(6)(xiii)(B) of this section, as a condition for the approval of the petition.

(*vii*) The employer 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 2023 supplemental allocations outlined in 20 CFR 655.65(a) and 655.67(a), as a condition for the approval of the H–2B petition. The employer must attest to this on Form ETA–9142–B–CAA–7 and must further attest on Form ETA–9142–B–CAA–7 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—*(*1*) *Petitions filed pursuant to paragraph (h)(6)(xiii)(A)(1)(i) requesting FY 2023 employment start dates on or before March 31, 2023.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xiii)(A)(*1*)(*a*) of this section requesting employment start dates on or before March 31, 2023 that are received after the applicable numerical limitation has been reached or after September 15, 2023.

(*2*) *Petitions filed pursuant to paragraph (h)(6)(xiii)(A)(1)(ii) requesting FY 2023 employment start dates from April 1, 2023 to May 14, 2023.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xii)(A)(*1*)(*ii*) of this section requesting employment start dates from April 1, 2023 to May 14, 2023 that are received earlier than 15 days after the INA section 214(g) cap for the second half FY 2023 has been met or after the applicable numerical limitation has been reached or after September 15, 2023.

(*3*) *Petitions filed pursuant to paragraph (h)(6)(xiii)(A)(1)(iii) of this section requesting FY 2023 employment start dates from May 15, 2023 and September 30, 2023.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xiii)(A)(*1*)(*iii*) of this section requesting employment start dates from May 15, 2023 to September 30, 2023, that are received earlier than 45 days after the INA section 214(g) cap for the second half FY 2023 has been met, or after the applicable numerical limitation has been reached or after September 15, 2023.

(*4*) *Petitions filed pursuant to paragraph (h)(6)(xiii)(A)(2) of this section requesting nationals of Guatemala, El Salvador, Honduras (Northern Central American countries), or Haiti with FY 2023 employment start dates.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xiii)(A)(*2*) of this section that have a date of need on or after April 1, 2023 and are received earlier than 15 days after the INA section 214(g) cap for the second half of FY 2023 is met, or after the applicable numerical limitation has been reached or after September 15, 2023.

(*5*) USCIS will not approve a petition filed pursuant to paragraph (h)(6)(xiii) of this section on or after October 1, 2023.

(D) *Numerical limitations under paragraphs (h)(6)(xiii)(A)(1) and (2) of this section.* When calculating the numerical limitations under paragraphs (h)(6)(xiii)(A)(*1*) and (*2*) of this section as authorized under Public Law 117–103, as extended by Public Law 117–180, 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)(xiii)(A)(*1*) or (*2*) of this section. 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)(xiii)(A)(*1*) and (*2*) of this section, 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)(xiii)(A)(*1*) or (*2*) of this section 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)(xiii)(A)(*1*) or (*2*) of this section may be received (in other words, if either of the numerical limits described in paragraph (h)(6)(xiii)(A)(*1*) or (*2*) of this section 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)(xiii) expires on October 1, 2023.

(F) *Non-severability.* The requirement to file an attestation under paragraph (h)(6)(xiii)(B)(*2*) of this section is intended to be non-severable from the remainder of paragraph (h)(6)(xiii), including, but not limited to, the numerical allocation provisions at paragraphs (h)(6)(xiii)(A)(*1*) and (*2*) of this section in their entirety. In the event that any part of this paragraph (h)(6)(xiii) is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this paragraph (h)(6)(xiii) 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)(xiii), as consistent with law.

* * * * *

(29) *Change of employers and portability for H–2B workers.* (i) This paragraph (h)(29) relates to H–2B workers seeking to change employers during the time period specified in paragraph (h)(29)(iv) of this section. Notwithstanding paragraph (h)(2)(i)(D) of this section:

(A) An alien in valid H–2B nonimmigrant status whose new petitioner files a non-frivolous H–2B petition requesting an extension of the alien's stay on or after January 25, 2023, is authorized to begin employment with the new petitioner after the petition described in this paragraph (h)(29) is received by USCIS and before the new H–2B petition is approved, but no earlier than the start date indicated in the new H–2B petition; or

(B) An alien whose new petitioner filed a non-frivolous H–2B petition requesting an extension of the alien's stay before January 25, 2023 that remains pending on January 25, 2023, 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)(29)(i)(A) of this section, and subject to the requirements of 8 CFR 274a.12(b)(33), the new period of employment described in paragraph (h)(29)(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)(29)(i)(B) of this section, the new period of employment described in paragraph (h)(29)(i) of this section may last for up to 60 days beginning on the later of either January 25, 2023 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)(33) 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)(29) 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 under this paragraph (h)(29):

(A) The alien must either have been in valid H–2B nonimmigrant status on or after January 25, 2023 and be the beneficiary of a non-frivolous H–2B petition requesting an extension of the alien's stay that is received on or after January 25, 2023, but no later than January 24, 2024; or be the beneficiary of a non-frivolous H–2B petition requesting an extension of the alien's stay that is pending as of January 25, 2023.

(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)(29) begins at 12 a.m. on January 25, 2023, and ends at the end of January 24, 2024.

* * * * *

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 December 15, 2022 through December 15, 2025, amend § 274a.12 by adding paragraph (b)(33) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(33) (i) Pursuant to 8 CFR 214.2(h)(29) and notwithstanding 8 CFR 214.2(h)(2)(i)(D), an alien is authorized to be employed no earlier than the start date of employment indicated in the H–2B petition and no earlier than January 25, 2023, by a new employer that has filed an H–2B petition naming the alien as a beneficiary and requesting an extension of stay for the alien, for a period not to exceed 60 days beginning on:

(A) The later of the ''Received Date'' on Form I–797 (Notice of Action) acknowledging receipt of the petition, or the start date of employment indicated on the new H–2B petition, for petitions filed on or after January 25, 2023; or

(B) The later of January 25, 2023 or the start date of employment indicated on the new H–2B petition, for petitions that are pending as of January 25, 2023.

(ii) If USCIS adjudicates the new petition prior to the expiration of the 60-day period in paragraph (b)(33)(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)(33) 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)(29) and paragraph (b)(33)(i) of this section begins at 12 a.m. on January 25, 2023, and ends at the end of January 24, 2024.

* * * * *

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Chapter V

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 5. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 6. Effective December 15, 2022 through September 30, 2023, add § 655.65 to read as follows:

§ 655.65 Special application filing and eligibility provisions for Fiscal Year 2023 under the December 15, 2022 supplemental cap increase.

(a) An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(xiii) to request H–2B workers with FY 2023 employment start dates on or before September 30, 2023, must meet the following requirements:

(1) The employer must attest on the Form ETA–9142–B–CAA–7 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)(xiii). Additionally, the employer's attestation must identify the types of evidence the employer is relying on and will retain to meet the irreparable harm standard, attest that the employer has created a detailed written statement describing how it is suffering irreparable harm or will suffer impending irreparable harm and describing how such evidence demonstrates irreparable harm, and attest that the employer will provide all documentary evidence of the applicable irreparable harm and the written statement describing how such evidence demonstrates irreparable harm to DHS or DOL upon request.

(2) The employer must attest on Form ETA–9142–B–CAA–7 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)(xiii), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2020, 2021, or 2022), unless the H–2B worker is a national of Guatemala, El Salvador, Honduras, or Haiti and is counted towards the 20,000 cap described in 8 CFR 214.2(h)(6)(xiii)(A)(*2*).

(3) The employer must attest on Form ETA–9142–B–CAA–7 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–7 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)(xiii)(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–7 and the I–129 petition 30 or more days after the certified start date of work, as shown on its approved Form ETA–9142B, *Final Determination: H–2B Temporary Labor Certification Approval,* 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, concurrently inform the SWA and NPC 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, 2021, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(xiii) 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 placed pursuant to (a)(5)(i) of this section, 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, and in writing;

(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, in writing; and

(vi) 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 written means) all U.S. workers currently employed at the place of employment, disclose the terms 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. The contact, disclosure, and request for assistance required by this paragraph (a)(5)(iv) must be provided in a language understood by the worker, as necessary or reasonable, and in writing;

(vii) Where the employer maintains a website for its business operations, 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 post the job opportunity in a conspicuous location on the website. The job opportunity posted on the website must disclose the terms of the job order placed pursuant to (a)(5)(i) of this section, and remain posted for at least 15 calendar days;

(viii) 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–7 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 2023 supplemental allocations outlined in this paragraph (a) and § 655.67(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, 2023.

(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 December 15, 2022 through September 30, 2026, add § 655.67 to read as follows:

§ 655.67 Special document retention provisions for Fiscal Years 2023 through 2026 under the Consolidated Appropriations Act, 2022, as extended by Public Law 117–180.

(a) An employer that files a petition with USCIS to employ H–2B workers in fiscal year 2023 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)(xiii), including a detailed written statement describing the irreparable harm and how such evidence shows irreparable harm;

(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)(xiii), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2020, 2021, or 2022), unless the H–2B worker(s) is a national of El Salvador, Guatemala, Honduras, or Haiti and is counted towards the20,000 cap described in 8 CFR 214.2(h)(6)(xiii)(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)(xiii)(A)(*2*); and

(4) If applicable, proof of recruitment efforts set forth in § 655.65(a)(5)(i) through (viii) 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)(ix).

(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, 2026.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Martin J. Walsh,

Secretary, U.S. Department of Labor.

[FR Doc. 2022–27236 Filed 12–12–22; 5:15 pm]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Whitebark Pine (*Pinus albicaulis*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2019–0054; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE23

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Whitebark Pine (*Pinus albicaulis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine that whitebark pine (*Pinus albicaulis*), a high-elevation tree species found across western North America, is a threatened species under the Endangered Species Act of 1973 (Act), as amended. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the species. We have determined that designation of critical habitat for the whitebark pine is not prudent at this time.

DATES: This rule is effective January 17, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0054. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0054.

FOR FURTHER INFORMATION CONTACT: Tyler Abbott, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office, 334 Parsley Boulevard, Cheyenne, WY 82007; telephone: 307–757–3707. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that whitebark pine meets the definition of a threatened species; therefore, we are listing it as such. We have determined that designating critical habitat is not prudent. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. This rule lists whitebark pine (*Pinus albicaulis*) as a threatened species under the Act. This document also finalizes a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of whitebark pine.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the primary stressor driving the status of the whitebark pine is white pine blister rust, a fungal disease caused by the nonnative pathogen *Cronartium ribicola* (Factor C). Whitebark pine is also negatively affected by the mountain pine beetle (*Dendroctonus ponderosae* Hopkins) (Factor C), altered fire regimes (Factor E), and the effects of climate change (Factor E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. We have determined that designating critical habitat is not prudent for whitebark pine at this time, for the reasons discussed below in Critical Habitat.

Previous Federal Actions

Please refer to the proposed rule to list whitebark pine as a threatened species (85 FR 77408; December 2, 2020) for a detailed description of previous Federal actions concerning this species.

Supporting Documents

We prepared an SSA report for whitebark pine in 2018 (Service 2018, entire) and developed a revised version (version 1.3) in 2021 (Service 2021, entire); this revised version includes updates based on new science and information provided during the public comment period on our proposed listing rule. The SSA team was composed of Service biologists; we also consulted with other species experts in the development of the SSA report. The SSA report compiles the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both detrimental and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report from independent scientists with expertise in whitebark pine biology, habitat management, genetics, and stressors (factors negatively affecting the species). Their comments were incorporated into the SSA report, as appropriate, during the proposed rule stage and informed our final determination. We also considered all comments and information we received from the public during the comment period for the proposed rule. The SSA report and other materials relating to this rule can be found at *https://ecos.fws.gov/ecp/species/1748* and at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0054.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the public on the proposed rule. In addition to minor editorial changes, we updated information in this final rule and the SSA report (Service 2021, entire) based on comments and additional information provided, as follows:

First, we incorporated information on acres burned in the United States between 2016 and 2019, as these data are now available in the Monitoring Trends in Burn Severity database (MTBS Data Access 2021). Data from these more recent fire seasons do not change our conclusions regarding the species' viability, as white pine blister rust remains the primary driver of the species' status; in fact, these additional

data validate our model assumptions that the intensity and extent of fire will increase in the future.

Second, we incorporated, in both the SSA report and in our discussion of fire in this final rule, new information on whitebark pine's susceptibility to damage from low-intensity fire, the role of low-severity fire in whitebark pine ecology, and the role of prescribed fire in maintaining and restoring whitebark pine (see Service 2021, pp. 34–41, 113). Although this information is important and relevant to the management and recovery of whitebark pine, it does not significantly affect our understanding of the threats to the species or our listing determination. The loss of whitebark pine to low-intensity fire would primarily affect individuals at the stand scale and is unlikely to affect the species' broader distribution and viability (Service 2021, p. 41).

Third, we revised our discussion of the stressor of altered fire regimes in the SSA report and in this rule to better capture the subtleties in recent research regarding the role of fire suppression in whitebark pine ecosystems (Service 2021, pp. 37–39). The idea that fire suppression has resulted in tree densification and loss of whitebark pine has been a predominant hypothesis in the whitebark pine literature (Arno 1980, p. 460; Arno 2001, p. 82; Keane et al. 2017a, p. 3; Keane and Parsons 2010, p. 57; Flanagan et al. 1998, p. 307); however, other recent research has challenged these findings (Service 2021, pp. 37–39). Whitebark pine may be more shade-tolerant and resilient to suppression than previously determined (Larson and Kipfmueller 2012, p. 204; Campbell and Antos 2003, p. 395; Dolanc et al. 2013, p. 272; Larson et al. 2009, p. 294). Thus, although fire suppression undoubtedly affects individual whitebark pine stands, it is unclear under what conditions fire suppression begins to negatively influence whitebark pine populations and the rate at which succession occurs in those populations. However, when considering the stressor of fire at the rangewide scale of whitebark pine, these additional nuances on the past effects of fire suppression do not change our original conclusions that high-severity fire currently influences whitebark pine and is expected to influence the species in the future.

Fourth, we added recent research to the SSA report regarding the characteristics of whitebark pine trees that are more resistant to mountain pine beetle attacks (Service 2021, pp. 53–54). These trees exhibited slower growth rates and greater genetic diversity (Kichas et al. 2020, p. 6; Six et al. 2021, p. 19; Six et al. 2021, p. 9). There is also recent evidence of a genetic basis for resistance to mountain pine beetle attack, with mountain pine beetles selecting some whitebark pine genotypes for attack over other genotypes, even during outbreaks (Six et al. 2018, p. 7). This research also shows that, although tree vigor is often used as an indicator of resistance to bark beetles in some conifer species, it does not appear to be an indicator of resistance to mountain pine beetle in whitebark pine, illustrating that thinning treatments may not enhance whitebark pine's defenses to bark beetles (Six et al. 2021, p. 19). Although this information is important and relevant to the management and recovery of whitebark pine, it does not significantly affect our understanding of the threats to the species or species' status.

Fifth, in the SSA report, we added information on the uncertainties regarding how climate change could affect Clark's nutcracker (*Nucifraga columbiana*) populations (Service 2021, p. 60). Should climate change negatively affect Clark's nutcracker populations under future warming scenarios, the additive effect would likely exacerbate the decline of whitebark pine in the future by disrupting the mutualistic relationship between the two species (Ray et al. 2020, p. 20); however, uncertainties remain as to how Clark's nutcracker could respond to climatic changes. This information only further supports our conclusion that whitebark pine is likely to become an endangered species in the foreseeable future.

Sixth, we revised language in appendix A of the SSA report, which discusses management and restoration, based on information from the comments we received on the proposed rule. This new language further acknowledges existing local conservation efforts and better reflects potential restoration strategies (Service 2021, pp. 119–144). We also include additional discussion of localized conservation efforts in this final rule.

Seventh, we made additional minor updates to the SSA report and, where appropriate, to this final rule, based on information provided in the comments, including, but not limited to, adding relevant literature references throughout, updating language regarding the species' shade tolerance (Service 2021, p. 22), detailing additional uncertainties surrounding Clark's nutcracker cache-site selection (Service 2021, p. 25), updating language in the SSA report's appendix A regarding the uncertainties inherent in identifying effective restoration strategies for the species (Service 2021, pp. 125–131), and updating language regarding whitebark pine seed-germination requirements (Service 2021, p. 25). In all, these minor updates to the SSA report do not change our overall understanding of the species' viability.

Eighth, we updated analysis and language in our determination of whitebark pine status throughout a significant portion of the range to ensure consistency with current practice and to enhance legal completeness.

Finally, we made the following changes to the discussion and/or regulatory text of the 4(d) rule:

- Based on a comment we received from the Confederated Salish and Kootenai Tribes, we added an exception to the 4(d) rule for this species to allow members of federally recognized Tribes to collect whitebark pine seeds for Tribal ceremonial use or traditional consumption. As we discuss in additional detail in Provisions of the Final 4(d) Rule, below, this minimal level of collection does not present a threat to the species and will ensure Tribes can continue to use these culturally significant seeds in their traditional practices.
- In our discussion of the 4(d) rule below, we clarify that the exception for ''forest-management activities'' includes vegetation management in existing utility rights-of-way, as this management does not present a threat to the species and could help reduce the risk of high-severity fire, and we add clarifying language regarding the relationship between the 4(d) rule for whitebark pine and section 7 consultation.
- We made editorial corrections to the wording of certain prohibitions and exceptions in the regulatory text of the 4(d) rule to increase clarity and to better align the language with existing regulations and law; these editorial corrections do not alter the original meaning of these prohibitions and exceptions.

I. Final Listing Determination

Background

A thorough review of the taxonomy, range and distribution, life history, and ecology of whitebark pine is presented in the SSA report (Service 2021, pp. 14–32; available at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2019–0054) and is briefly summarized here. Whitebark pine is a slow-growing, long-lived, five-needle conifer, occurring at high elevations across the western United States and Canada. Whitebark pine has a broad range both latitudinally (occurring from a southern extent of approximately 36°

north in California to 55° north latitude in British Columbia, Canada) and longitudinally (occurring from approximately 128° west in British Columbia, Canada, to an eastern extent of 108° west in Wyoming). Rangewide, whitebark pine occurs on an estimated 32,616,422 hectares (ha) (80,596,935 acres (ac)) in western North America.

Whitebark pine typically occurs on cold and windy high-elevation sites in western North America, although it also occurs in scattered areas of the warm and dry Great Basin (Service 2021, p. 14). Whitebark pine is considered both a keystone and a foundation species in western North America, where it increases biodiversity and contributes to critical ecosystem functions (Tomback et al. 2001, pp. 7–8).

Whitebark pine is a hardy conifer that tolerates poor soils, steep slopes, and windy exposures; it is found at alpine tree line and subalpine elevations throughout its range (Tomback et al. 2001, pp. 6, 27). Whitebark pine is slow-growing and moderately shade-tolerant, and can be outcompeted and replaced by more shade-tolerant trees in the absence of disturbances like fire (Arno and Hoff 1989, p. 6). The species grows under a wide range of annual precipitation amounts, from about 51 to over 254 centimeters (cm) (20 to 100 inches (in.)) per year, and it is considered relatively drought-tolerant (Arno and Hoff 1989, p. 7; Farnes 1990, p. 303). A variety of soil types supports whitebark pine (Weaver 2001, pp. 47–48; Keane et al. 2012, p. 3). These soil types are generally described as well-drained soils that are poorly developed, coarse, rocky, and shallow over bedrock (COSEWIC 2010, p. 10).

Primary seed dispersal occurs almost exclusively by Clark's nutcrackers, a bird in the family Corvidae (whose members include ravens, crows, and jays) (Lanner 1996, p. 7; Schwandt 2006, p. 2). Seed predation plays a major role in whitebark pine population dynamics, as seed predators' actions largely determine the fate of seeds. However, whitebark pine has coevolved with seed predators and has several adaptations, such as masting (regional synchrony of mass production of seeds), that have allowed the species to persist despite heavy seed predation (Lorenz et al. 2008, pp. 3–4). Whitebark pine trees may produce both male and female cones (Service 2021, p. 20). Some whitebark pine individuals are capable of producing limited amounts of seed cones at 20 to 30 years of age, although large cone crops usually are not produced until 60 to 80 years (Krugman and Jenkinson 1974, as cited in McCaughey and Tomback 2001, p. 109), with average earliest first cone production at 40 years (Tomback and Pansing 2018, p. 7). Individual whitebark pine trees can survive on the landscape for hundreds of years (Service 2021, p. 20).

In the literature, there is a range of time periods experts have used to inform whitebark pine generation time; these methods have included average age of first cone production (around 40 years) (Tomback and Pansing 2018, p. 7) and the age trees produce a large cone crop that can attract Clark's nutcrackers (60 to 80 years) (Krugman and Jenkinson 1974, as cited in McCaughey and Tomback 2001, p. 109). Therefore, the full range of possible generation times for whitebark pine is 40 to 80 years. In our SSA, we used 60 years as the average generation time to inform the time intervals for our future condition analysis in the SSA; this is the midpoint of the range of possible generation times in the literature (Service 2021, p. 99).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019). We collectively refer to these actions as the 2019 regulations.

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (see *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)); *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean

that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time for which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report (Service 2021, entire); the full SSA report can be found at Docket No. FWS–R6–ES–2019–0054 on *https://www.regulations.gov* and at *https://ecos.fws.gov/ecp/species/1748.*

To assess whitebark pine viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the stressors that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. We completed a comprehensive assessment of the biological status of the whitebark pine and prepared a report of the assessment (the SSA report; Service 2021, entire), which provides a thorough account of the species' needs and overall viability. We define viability here as the ability of the species to sustain populations in the wild into the future. In the discussion below, we summarize the conclusions of that assessment, which we provide in full under Docket No. FWS–R6–ES–2019–0054 on *https://www.regulations.gov* and at *https://ecos.fws.gov/ecp/species/1748.*

In the SSA, we discuss individual-, population-, and species-level needs of whitebark pine in detail (Service 2021, pp. 22–32). In general, whitebark pine individuals have similar requirements to other tree species. That is, all four life stages require adequate amounts of sunlight, water, and soil for survival and/or reproduction (Service 2021, pp. 22–28). Clark's nutcrackers are able to assess cone crops, and if there are insufficient seeds to cache, they will emigrate in order to survive (McKinney et al. 2009, p. 599). Therefore, at the population level, whitebark pine populations need sufficient density and abundance of reproductive individuals to facilitate masting and to attract Clark's nutcrackers, in order to achieve adequate recruitment and maintain resiliency to stochastic events (Service 2021, pp. 27–30). At the species-level, for long-term viability, whitebark pine requires multiple (redundancy), self-sustaining populations (resiliency) distributed across the landscape (representation) to maintain the ecological and genetic diversity of the species (Service 2021, pp. 31–32).

Rangewide data from U.S. Forest Service (USFS) Forest Inventory and Analysis surveys indicate that 51 percent of all standing whitebark pine trees in the United States are now dead, with over half of that mortality occurring approximately in the last two decades alone (Service 2021, p. 86; Goeking and Izlar 2018, p. 7). We focused our analysis of whitebark pine's viability on four main stressors: white pine blister rust, mountain pine beetle, altered fire regimes, and climate change. We focused on these four stressors because, according to the best available

data, these stressors are the leading factors attributed to the aforementioned decline of whitebark pine (Keane and Arno 1993, p. 44; Tomback et al. 2001, p. 13; COSEWIC 2010, p. 24; Tomback and Achuff 2010, p. 186; Keane et al. 2012, p. 1; Mahalovich 2013, p. 2; Mahalovich and Stritch, 2013, entire; Smith et al. 2013, p. 90; Greater Yellowstone Whitebark Pine Monitoring Working Group (GYWPMWG) 2016, p. v; Jules et al. 2016, p. 144; Perkins et al. 2016, p. xi; Shanahan et al. 2016, p. 1; Shepherd et al. 2018, p. 138). While all of these stressors affect the species, we found that white pine blister rust is the main driver of the species' current and future conditions. Each of these four stressors is described in detail in our SSA report (Service 2021, pp. 34–63), and is summarized below. There are numerous other factors that operate on whitebark pine at more local scales, affecting individuals or local areas; these include, but are not limited to, agriculture; energy production and mining; biological resource use (*e.g.,* logging); and recreation (Service 2021 pp. 145–160). However, these factors are likely not driving population dynamics of whitebark pine on a rangewide scale, or at the species level (Service 2021, p. 34).

White Pine Blister Rust

White pine blister rust is a fungal disease of five-needle pines caused by a nonnative pathogen (Geils et al. 2010, p. 153). The fungus was inadvertently introduced to the West Coast around 1910, near Vancouver, British Columbia (McDonald and Hoff 2001, p. 198; Brar et al. 2015, p. 10). The incidence of white pine blister rust at stand, landscape, and regional scales varies due to time since introduction and environmental suitability for its development. It continues to spread into areas originally considered less suitable for infection, such as the Sierra Nevada Mountains, where it has become a serious stressor, causing severe population losses to several species of western pines, including whitebark pine (Schwandt et al. 2010, pp. 226–230). Its current known geographic distribution in western North America includes all U.S. States and British Columbia and Alberta, Canada.

The white pine blister rust fungus has a complex life cycle: It does not spread directly from one tree to another, but alternates between primary hosts (*i.e.,* five-needle pines) and alternate hosts. Alternate hosts in western North America are typically woody shrubs in the genus *Ribes* (gooseberries and currants) (McDonald and Hoff 2001, p. 193; McDonald et al. 2006, p. 73). The spreading of white pine blister rust spores depends on the distribution of hosts, the prevailing microclimates, and the different genotypes of white pine blister rust and hosts (McDonald and Hoff 2001, pp. 193, 202). A wave event (a massive spreading of new white pine blister rust infections into new or relatively unaffected areas, or intensification of spread from a cumulative buildup in already infected stands) occurs where alternate hosts are abundant and when late-summer weather is favorable to spore production and dispersal and subsequent infection of pine needles. Because its abundance is influenced by weather and host populations, white pine blister rust also is affected by climate change. If conditions become cooler or moister, white pine blister rust will likely spread and intensify; conversely, where conditions become both warmer and drier, it may spread more slowly (Service 2021, p. 45). However, even if climatic conditions slow the spread of white pine blister rust, it remains present on the landscape and will still continue to infect trees, albeit at a slower rate.

White pine blister rust attacks whitebark pine seedlings, saplings, and mature trees, damaging stems and cone-bearing branches and restricting nutrient flows. It eventually girdles branches and boles (tree trunks or stems), leading to the death of branches or the entire tree (Tomback et al. 2001, p. 15; McDonald and Hoff 2001, p. 195). While some infected mature trees can continue to live for decades (Wong and Daniels 2017, p. 1935), their cone-bearing branches typically die first, thereby eliminating the seed source required for reproduction (Geils et al. 2010, p. 156). Although some areas of the species' range have been affected by white pine blister rust for 90 years or more, for whitebark pine that timeframe equates to only 1.5 generations (Mahalovich 2013, p. 17), which means the species has had a limited time to adapt to or develop resistance to white pine blister rust. However, low levels of rust resistance have been documented on the landscape in individual trees and their seeds, indicating that there is some level of heritable resistance to white pine blister rust (Hoff et al. 2001, p. 350; Mahalovich et al. 2006, p. 95; Mahalovich 2015, p. 1). In some populations and geographic areas, there is moderate frequency and level of genetic resistance, while in others, the frequency of resistance appears to be much lower (Sniezko 2018, pp. 1–2).

Most current management and research focus on producing and planting whitebark pine seedlings with proven genetic resistance to white pine blister rust, but also include enhancing natural regeneration and applying silvicultural treatments, such as appropriate site selection and preparation, pruning, and thinning (Zeglen et al. 2010, p. 347). However, management challenges to restoration include remoteness, difficulty of access, and a perception that some whitebark pine restoration activities conflict with wilderness values (Schwandt et al. 2010, p. 242). In addition, the vast scale at which planting rust-resistant trees would need to occur, the long timeframes in which restoration efficacy could be assessed, and limited funding and resources will make it challenging to restore whitebark pine throughout its range. Based on modeling results (Ettl and Cottone 2004, pp. 36–47; Hatala et al. 2011, entire; Field et al. 2012, p. 180), we conclude that, in addition to the ubiquitous presence of white pine blister rust across the entire range of the whitebark pine, white pine blister rust infection likely will continue to increase and intensify within individual sites, ultimately resulting in stands that are no longer viable and potentially face extirpation. For a more detailed discussion of white pine blister rust, see the SSA report (Service 2021, pp. 41–48).

Mountain Pine Beetle

The native mountain pine beetle is one of the principal sources of whitebark pine mortality (Raffa and Berryman 1987, p. 234; Arno and Hoff 1989, p. 7). Mountain pine beetles feed on whitebark pine and other western conifers and, to reproduce successfully, the beetles must kill host trees (Logan and Powell 2001, p. 162; Logan et al. 2010, p. 895). At endemic, or more typical, levels, mountain pine beetles remove relatively small areas of trees, changing stand structure and species composition in localized areas. However, when conditions are favorable (abundant hosts and favorable climate), mountain pine beetle populations can erupt to epidemic levels and create stand-replacing events that may kill 80 to 95 percent of suitable host trees (Berryman 1986 as cited in Keane et al. 2012, p. 26). Such outbreaks are episodic, and typically subside only when the supply of suitable host trees has been exhausted or when winter temperatures are sufficiently low to kill larvae and adults (Gibson et al. 2008, p. 2). Therefore, at epidemic levels, mountain pine beetle outbreaks may have population-level effects on whitebark pine.

Mountain pine beetle epidemics affecting whitebark pine have occurred

throughout recorded history (Keane et al. 2012, p. 26). The most recent epidemic began in the late 1990s, and, although the levels of mortality from this epidemic have since subsided considerably, mountain pine beetles continue to be a measurable source of mortality for whitebark pine (Macfarlane et al. 2013, p. 434; Mahalovich 2013, p. 21; Shelly 2014, pp. 1–2). Unlike previous epidemics, the most recent mountain pine beetle outbreak had a significant rangewide impact on whitebark pine (Logan et al. 2003, p. 130; Logan et al. 2010, p. 898; MacFarlane et al. 2013, p. 434). Warmer, shorter winter seasons caused by climate change have provided favorable conditions necessary to sustain the most recent, unprecedented mountain pine beetle epidemic in high-elevation communities across the western United States and Canada (Logan and Powell 2001, p. 167; Logan et al. 2003, p. 130; Raffa et al. 2008, p. 511). This most recent epidemic is waning across the majority of the West (Hayes 2013, pp. 3, 41, 42, 54; Alberta Whitebark and Limber Pine Recovery Team 2014, p. 18; Bower 2014, p. 2; Shelly 2014, pp. 1–2). However, given ongoing and predicted environmental effects from climate change, we expect mountain pine beetles will continue to expand into higher-elevation habitats and that epidemics will continue within the range of whitebark pine (Buotte et al. 2016, p. 2516; Sidder et al. 2016, p. 9). For a more detailed discussion of mountain pine beetles, see the SSA report (Service 2021, pp. 48–57).

Altered Fire Regimes

Fire is one of the most important landscape-level disturbance processes within high-elevation whitebark pine forests (Agee 1993, p. 259; Morgan and Murray 2001, p. 238; Spurr and Barnes 1980, p. 422) and is relevant to whitebark pine both as a stressor that causes mortality and as a mechanism that affects forest succession (Arno 2001, p. 82; Shoal et al. 2008, p. 20; Keane and Parsons 2010, p. 57). Although whitebark pine is fire-adapted, there is uncertainty surrounding the specifics of these adaptations, including the species' ability to resist fires of differing intensity, the role of low-severity fire, and how fire suppression interacts with fire-return intervals to affect forest succession across the range of whitebark pine. We discuss the ways in which fire can influence whitebark pine population dynamics in the SSA report, including highlighting these relevant uncertainties (Service 2021, pp. 34–41).

When considering the role of fire in whitebark pine ecosystems, it is critical to consider the potential effects that differing fire intensities have on fire severity and, consequentially, how differing severities may affect the species. Fire intensity describes the energy released from the combustion of organic matter; fire severity describes the effects that the fire's intensity has on the ecosystem (Keeley 2009, pp. 117–118). Fire resistance is the ability of mature trees to withstand surface fire; different tree species have different functional traits that affect their ability to resist surface fires of differing intensities (Stevens et al. 2020, p. 945). Higher-intensity fires often result in higher-severity fire effects, and lower-intensity fires often result in lower-severity fire effects, but the latter is not necessarily always the case. In systems where the vegetation is not well-adapted to resist and survive low-intensity fire, those fires can result in more severe fire effects.

Whitebark pine is well-adapted to mixed- and high-severity fire effects. In many areas, mixed- and high-severity fire have historically been conducive to the maintenance of whitebark pine ecosystems at the landscape scale (Arno et al. 2000, p. 226; Arno 2001, p. 83, Campbell and Antos 2003, p. 393; Larson et al. 2009, p. 283; Romme 1982, p. 208). Fire can expose mineral soils and reduce forest canopy closure, providing optimal growing conditions for whitebark pine seedlings (Tomback et al. 2001, p. 13). Mixed- and high-severity fires also create open areas that whitebark pine may colonize via seed dispersal facilitated by Clark's nutcracker, although this colonization depends on the availability of nearby seed sources (McCaughey et al. 1985; Tomback et al. 1990, 1993 in Keane and Parsons 2010, p. 58).

Some experts also conclude that low-intensity surface fires that result in low-severity fire effects are an important ecosystem process in some whitebark pine systems, because low-severity fire can remove small-diameter trees and seedlings, reduce fuel loads, and allow mature whitebark pine trees to maintain site dominance or co-dominance (Arno 2001, p. 82; Keane and Parsons 2010, p. 57; Flanagan et al. 1998, p. 307). However, whitebark pine's ability to resist and survive low-intensity fire is still somewhat uncertain, as we discuss in additional detail in the SSA report (Service 2021, pp. 36–37; Arno and Hoff 1990 in Keane and Parsons 2010, p. 58; Stevens et al. 2020, p. 948; Hood et al. 2008, p. 66; Keane et al. 2020, p. 7; Keane and Parsons 2010, p. 63). Despite these uncertainties, the loss of whitebark pine to low-intensity fire would primarily affect individuals at the stand scale and is unlikely to affect the species' broader distribution (Service 2021, p. 41).

Despite adaptations that allow whitebark pine to recolonize areas that experience high-severity fire effects, the ability of whitebark pine to regenerate and reestablish following high-severity fire has been disrupted by white pine blister rust in many areas. This stressor makes the species more vulnerable to the impacts of fire (Service 2021, p. 40). White pine blister rust has killed many mature whitebark pine trees, effectively reducing or eliminating whitebark pine seed sources. The presence of white pine blister rust also reduces whitebark pine seedling survival, which significantly reduces the species' ability to regenerate in fire-created openings that are typically ideal for seedling establishment. Thus, although high-severity fires may create these ideal openings for seed caching, facilitate seedling establishment, and reduce competitive pressures, we view the immediate large-scale loss of mature whitebark pine trees, the corresponding loss of seed sources, and potential reduction of genetic diversity as the predominant effects of high-severity fire.

In summary, fire has been an important ecosystem process in maintaining whitebark pine on the landscape throughout the species' evolutionary history. However, these historical dynamics with fire have likely been altered due to the compounding effects of white pine blister rust and mountain pine beetles. Also, in general, fire characteristics are expected to shift with future climate changes. Substantial increases in fire-season length, number of fires, area burned, and intensity are predicted (*e.g.,* Keane et al. 2017b, pp. 34–35; Westerling 2016, pp. 1–2). Thus, although there is variation in the degree to which specific stands have been affected, over the range of whitebark pine, the widespread incidence of poor stand health and reduced reproductive capacity from disease and predation, coupled with changes in fire regimes due to climate change, has compromised and will continue to compromise regeneration of whitebark pine in many cases (Tomback et al. 2008, p. 20; Leirfallom et al. 2015, p. 1601). These factors increase the likelihood of negative effects to whitebark pine populations from fire, especially from high-severity fires that can cause widespread tree mortality. For a more detailed discussion of altered fire regimes, see the SSA report (Service 2021, pp. 34–41).

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. In general, the pace of predicted climate change will likely outpace many plant species' abilities to respond to the concomitant habitat changes. Whitebark pine is potentially particularly vulnerable to warming temperatures because it is adapted to cool, high-elevation habitats. Therefore, current and anticipated warming is expected to make its current habitat unsuitable for whitebark pine, either directly or indirectly as conditions become more favorable to whitebark pine competitors, such as subalpine fir (*Abies lasiocarpa*) or mountain hemlock (*Tsuga mertensiana*) (Bartlein et al. 1997, p. 788; Hamann and Wang 2006, p. 2783; Hansen and Phillips 2015, p. 74; Schrag et al. 2007, p. 8; Warwell et al. 2007, p. 2; Aitken et al. 2008, p. 103; Loehman et al. 2011, pp. 185–187; Rice et al. 2012, p. 31; Chang et al. 2014, p. 10). The rate of migration needed to respond to predicted climate change will be substantial (Malcolm et al. 2002, pp. 844–845; McKenney et al. 2007, p. 941). The ability of whitebark pine to migrate to more favorable areas at a pace sufficient to survive the projected effects of climate change is unknown. We also do not know the degree to which the Clark's nutcracker could facilitate this migration. In addition, the presence of significant white pine blister rust infection in the northern range of whitebark pine could serve as a barrier to effective northward migration. Whitebark pine currently inhabits high elevations, so there is little remaining habitat in many areas for the species to migrate to higher elevations in response to warmer temperatures. Adaptation in response to a rapidly warming climate would also be unlikely, as whitebark pine is a long-lived species with a long generation time (Bradshaw and McNeilly 1991, p. 10).

Climate models indicate that climate change is expected to act directly and indirectly, regardless of the emission scenario, to significantly decrease the probability of rangewide persistence in whitebark pine within the next 100 years (*e.g.,* Warwell et al. 2007, p. 2; Hamann and Wang 2006, p. 2783; Schrag et al. 2007, p. 6; Rice et al. 2012, p. 31; Loehman et al. 2011, pp. 185–187; Chang et al. 2014, p. 10–12). This time interval is less than two generations for this long-lived species. See Determination of Whitebark Pine Status, below, for a discussion of the relationship between this modeled timeframe and our identification of the foreseeable future for this listing determination. In addition, projected climate-change effects are a significant stressor to whitebark pine because the impacts of climate change, including projected temperature and precipitation changes, interact with and exacerbate the other stressors, such as mountain pine beetle and altered fire regimes, resulting in habitat loss and population decline. For a more detailed discussion of climate change impacts on whitebark pine, see the SSA report (Service 2021, pp. 57–63).

Current Conditions

In order to assess the current condition of the whitebark pine across its extensive range, we broke the range into 15 smaller analysis units (AUs), based primarily on Environmental Protection Agency Level III ecoregions as well as input from whitebark pine experts, as described in the SSA report (see Table 1 below; Service 2021, pp. 65–67). Ecoregions identify areas of general similarity in ecosystems, as well as topographic and environmental variables. We further divided AUs in the United States from those in Canada to reflect differences in management and legal status. A map of these AUs is available in the SSA report (Service 2021, p. 66, figure 9), and we detail the area of each AU in Table 1 below. We then evaluated the best available data regarding the current impacts of fire, white pine blister rust, and mountain pine beetle on the resiliency (ability to withstand stochastic events) of each AU. These analyses are described in detail in the SSA report (Service 2021, pp. 68–83), and our conclusions are summarized below. We note that not all AUs are equal in size; they encompass varying proportions of the species' range, ranging from the Middle Rockies AU (27.6 of the range) to the Olympics AU (0.4 of the range) (Service 2021, p. 67, table 3).

TABLE 1—WHITEBARK PINE ANALYSIS UNITS (AUS)

AU	Area of whitebark pine range within each AU	Percent of total whitebark pine range within each AU
Middle Rockies	9,008,418 ha (22,260,286 ac)	27.6
Idaho Batholith	4,621,881 ha (11,420,917 ac)	14.2
Canadian Rockies	3,660,161 ha (9,044,455 ac)	11.2
Cascades	2,906,758 ha (7,182,755 ac)	8.9
Columbia Mountains	2,849,789 ha (7,041,982 ac)	8.7
U.S. Canadian Rockies	2,153,185 ha (5,320,636 ac)	6.6
Fraser Plateau	2,122,498 ha (5,244,807 ac)	6.5
Northern Rockies	1,704,834 ha (4,212,737 ac)	5.2
Sierras	1,292,333 ha (3,193,424 ac)	4.0
Basin and Range	827,089 ha (2,043,781 ac)	2.5
Blue Mountains	554,865 ha (1,371,101 ac)	1.7
Klamath Mountains	334,950 ha (827,679 ac)	1.0
Nechako Plateau	266,078 ha (657,493 ac)	0.8
Thompson Plateau	194,264 ha (480,037 ac)	0.6
Olympics	119,319 ha (294,844 ac)	0.4
Total Size of Whitebark Range	32,616,422 ha (80,596,935 ac).	

Resiliency

To assess the current impact of white pine blister rust on the resiliency of whitebark pine AUs, we examined the large volume of published literature and information provided by experts, as described in the SSA report (Service 2021, pp. 72–79). White pine blister rust infections have increased in intensity over time and are now prevalent even in trees living in cold, dry areas formerly considered less susceptible (Tomback and Resler 2007, p. 399; Smith-Mckenna et al. 2013, p. 224), such as the Greater Yellowstone Ecosystem. This trend has

resulted in reduced seed production and increased mortality. We assessed the current impact of white pine blister rust on whitebark pine by evaluating data from a modeled dataset developed by the USFS in 2011 for the United States. This modeled dataset is based on white pine blister rust infection information from the USFS Whitebark and Limber Pine Information System (WLIS) database combined with environmental variables (Service 2021, pp. 76–77). Canadian white pine blister rust data were derived from a combination of survey data from Parks Canada and empirical literature (*e.g.,* COSEWIC 2010, p. viii and table 4, p. 19; Smith et al. 2010, p. 67; Smith et al. 2013, p. 90; Shepherd et al. 2018, p. 6). Approximately 34 percent of the range is infected with white pine blister rust (Service 2021, p. 77), and every AU is currently affected by the disease. The current average white pine blister rust infection level within each AU ranges between 2 percent and 74 percent, with 12 of the 15 AUs having an average infection level over 20 percent, and 5 of the AUs having average infection levels above 40 percent (Service 2021, pp. 78–79). Average infection levels are lowest in the southern AUs (Klamath Mountains, Basin and Range, and Sierras) and sharply increase moving north into the latitudes of the Rocky Mountains and Cascades. As stated above, once white pine blister rust is present in an area, there are no known methods to eradicate it. It will spread and infect more of the area when conditions are favorable.

To assess the current impact of mountain pine beetle on the resiliency of whitebark pine AUs, we aggregated aerial detection survey (a USFS dataset) data for the United States and aerial overview survey (a dataset of the British Columbia Ministry of Forests) data for Canada from 1991 through 2016 across the range of whitebark pine (Service 2021, pp. 80–83). As mountain pine beetles only attack mature trees, the effects of mountain pine beetle attacks observed during aerial surveys can be interpreted as the loss of seed-producing trees. From 1991 through 2016, 5,919,276 ha (14,626,850 ac) of the whitebark pine's range have been affected by the mountain pine beetle, resulting in at least 18 percent of the whitebark pine's range being negatively affected (Service 2021, pp. 80–83). Similar to white pine blister rust infection, the southern AUs are currently less affected by the mountain pine beetle than their more northern counterparts.

To assess the current impact of fire on the resiliency of whitebark pine AUs, we examined burn data collected from 1984 to 2016 from the following sources: Monitoring Trends in Burn Severity (a multi-agency program compiling fire data from multiple sources including the U.S. Geological Survey and the USFS); GeoMac (a multi-agency program providing fire data from multiple agencies managed by the U.S. Geological Survey); and the Canadian Forest Service (Service 2021, p. 68). We found that from 1984 to 2016, between 0.08 percent and 42.64 percent of each AU burned (including fires of any severity level). Although we collected information on all fires, our analysis focuses on areas affected by high-severity fire that could potentially negatively affect the species. Overall, a minimum of 1,273,583 ha (3,147,092 ac) of whitebark pine habitat burned in high-severity fires during this time period, equating to approximately 5 percent of the species' range within the United States (Service 2021, pp. 69–71). Between 2016 and 2019, an additional 0.8 percent of whitebark pine range within the United States (or 191,459 ha (471,105 ac)) burned at high severity (Service 2021, p. 69). Similar data for high-severity fires were not available for AUs in Canada.

White pine blister rust, mountain pine beetle, and high-severity fires all act on portions of whitebark pine's range, killing individuals and limiting reproduction and regeneration (Service 2021, p. 89, figure 14). Overall, whitebark pine stands have seen severe reductions in reproduction and regeneration because of these stressors, resulting in a reduction in resiliency or their ability to withstand stochastic events. Interactions between these factors have further exacerbated the species' decline and have reduced its resiliency.

Representation

Having evaluated the current impact of the above stressors on the resiliency of each whitebark pine AU, we next evaluated the species' current levels of representation, or ability to adapt to changing conditions (Service 2021, pp. 83–86). The range of variation found within a species, which may include ecological, genetic, morphological, and phenological diversity, may be an indication of its levels of representation. Whitebark pine can be found in a number of ecological settings throughout its range, mainly depending on elevation, latitude, and climate of an area. Whitebark pine has high genetic diversity relative to other conifer tree species (*i.e.,* high representation in terms of genetic variation), with poor genetic differentiation among zones, and similar levels of diversity to other widely distributed tree species in North America (Mahalovich and Hipkins 2011, p. 126). The high levels of genetic diversity within the species may be affected through bottleneck events caused by mortality resulting from white pine blister rust, mountain pine beetle, or high-severity fires. Whitebark pine also has higher rates of inbreeding than most other wind-pollinated species, likely due to Clark's nutcracker dispersal; Clark's nutcracker can deposit clumps of related seeds in the same vicinity, which leads to close proximity of related mature trees (Keane et al. 2012, p. 14; Service 2021, p. 85). Whitebark pine exhibits a range of morphologies, from tall, single-stemmed trees to shrub-like krummholz forms. These factors may contribute to the species' level of ability to adapt to changing conditions. Given the species' wide geographic range and levels of ecological, genetic, morphological, and phenological diversity, it likely has inherently higher levels of representation than many species.

Redundancy

Finally, we evaluated the whitebark pine's current levels of redundancy, or ability to withstand catastrophic events. Whitebark pine is widely distributed, and thus inherently has higher levels of redundancy than many species. Rangewide, whitebark pine occurs on an estimated 32,616,422 ha (80,596,935 ac) in western North America. However, as a result of the rangewide reduction in resiliency due to the stressors discussed above, there has been a concomitant loss in species redundancy, as many areas become less able to contribute to the species' ability to withstand catastrophic events (Service 2021, p. 86).

Overall, as previously mentioned, rangewide data from USFS Forest Inventory and Analysis surveys indicate that 51 percent of all standing whitebark pine trees in the United States are now dead, with over half of this mortality occurring approximately in the last two decades alone (Goeking and Izlar 2018, p. 7). Each of the stressors acts individually and cumulatively on portions of the whitebark pine's range, and interactions between stressors have further exacerbated the species' decline and have reduced its resiliency. This reduction in resiliency is rangewide, occurring across all AUs, with the Canadian Rockies AU, U.S. Canadian Rockies AU, and Northern Rockies AU likely the most affected. While the species is still wide-ranging and, therefore, has inherently higher levels of representation and redundancy than

many species, reductions to resiliency across the range are reducing the species' adaptive capacity and ability to withstand catastrophic events (Service 2021, pp. 86–88).

Future Conditions

To assess the future condition of whitebark pine, we projected the impacts of each of the stressors described above under three plausible scenarios (scenarios 1, 2, and 3, as noted below). This analysis, and the uncertainties and assumptions associated with it, are described in more detail in the SSA report (Service 2021, pp. 90–117), and are summarized below. Scenarios constructed include variation in:

(1) The presence of white pine blister rust. Given historical trends, we assume in all scenarios that white pine blister rust will continue to spread and intensify throughout the range of whitebark pine. There is no information to indicate that the rate of spread or prevalence of white pine blister rust will decrease in the future. The incidence of white pine blister rust at stand, landscape, and regional scales varies due to time since introduction and environmental suitability for its development. It continues to spread into areas originally considered less suitable for persistence, and it has become a primary threat. In our future scenarios, we varied the future rate of white pine blister rust spread between 1 and 4 percent annually based on values presented in the literature (*e.g.,* Schwandt et al. 2013, entire; Smith et al 2013, entire). The percentage of genetically resistant individuals and the effectiveness and scale of management efforts to collect, propagate, and plant genetically resistant individuals are key areas of uncertainty. Therefore, we varied the level of genetic resistance between a lower value of 10 percent and higher value of 40 percent based on a range of values presented in the literature (*e.g.,* Mahalovich 2013, p. 33). We considered the higher 40 percent value to include both the presence of some level of natural resistance and planting of resistant individuals.

(2) The frequency of high-severity fire. Given current trends and predictions for future changes in the climate, we assume in all scenarios that the frequency of stand-replacing fires will increase, although the magnitude of that increase is uncertain (Keane et al. 2017b, p. 18; Westerling 2016, entire; Littell et al. 2010, entire). Because of that uncertainty, we chose what are likely conservative values of a 5 or 10 percent increase in severe fire above current annual levels.

(3) The magnitude of future mountain pine beetle impacts. Given warming trends, we assume in all scenarios that mountain pine beetle epidemics will continue to affect whitebark pine in the future. There is no information to indicate that mountain pine beetle epidemics will decrease in magnitude or frequency in the future. In our future scenarios, we predicted a new mountain pine beetle epidemic would occur every 60 years, as that is the minimum time it would likely take for individual trees to achieve stem diameters large enough to facilitate successful mountain pine beetle brood production that is required to reach epidemic levels.

Climate change is understood to affect whitebark pine principally through its effect on the magnitude of the other three key stressors and was, therefore, included in these projections as an indirect impact to whitebark pine resilience by modifying the rate of change in the other stressors (Service 2021, p. 90). Similarly, potential levels of current and future conservation efforts were also included indirectly in these projections by varying the rate of change of those stressors for which conservation could potentially have an effect. Due to the longevity and long generation time of the species, we modeled projections of impacts for several timeframes, going out 180 years, which corresponds to approximately three generations of whitebark pine (Tomback and Pansing 2018, p. 7; COSEWIC 2010, p. v). However, we focused our discussion of viability in the SSA report largely on the 60-year (approximately one generation) timeframe where our confidence is greatest with respect to the range of plausible projected changes to stressors and the species' response. We note that our projections are based on long-term geospatial data sets and a large body of empirical data, and our scenarios encompass the full range of conditions that could plausibly occur. Below, we briefly summarize each scenario that we considered and the results of our analysis under each scenario.

Scenario 1 is a continuation of current trends, where impacts from high-severity fires and the mountain pine beetle continue at current levels. We predicted a new mountain pine beetle epidemic would occur every 60 years, as that is the minimum time it would likely take for individual trees to achieve stem diameters large enough to facilitate successful mountain pine beetle brood production that is required to reach epidemic levels. In this scenario, white pine blister rust begins at the current estimated proportion of the range infected and spreads at 1 percent per year with an assumed 10 percent level of genetically resistant individuals (Service 2021, p. 97).

In scenario 2, high-severity fires increase by 5 percent over current trends. The spread of white pine blister rust continues at a relatively low annual rate (1 percent per year), and the assumed level of genetic resistance to white pine blister rust is relatively high at 40 percent (a value that includes both the presence of some level of natural resistance and planting of resistant individuals). Mountain pine beetle epidemics continue to occur at 60-year intervals, but 20 percent of affected whitebark pine stands are re-established through conservation efforts, primarily by out-planting nursery-bred seedlings (Service 2021, p. 98).

In scenario 3, high-severity fires increase by 10 percent over current trends. The spread of white pine blister rust increases (4 percent per year), and only 10 percent of individuals on the landscape have genetic resistance to white pine blister rust. Mountain pine beetle epidemics continue to occur at 60-year intervals, but impacts increase in severity by 10 percent, and there is no recruitment between epidemics (Service 2021, p. 98).

Under each scenario, we forecasted the percentage of the whitebark pine's range that each stressor would affect, relative to current levels. We focused our discussion of viability in the SSA report largely on the 60-year (approximately one generation) timeframe where our confidence is greatest with respect to the range of plausible projected changes to stressors and the species' response. See Determination of Whitebark Pine Status, below, for a discussion of the relationship between this modeled timeframe and our identification of the foreseeable future for this listing determination. Currently, white pine blister rust infects approximately 34 percent of whitebark pine's range. Within the 60-year timeframe, under scenario 1, white pine blister rust would infect approximately 61 percent of the range. Under scenario 2, white pine blister rust will infect approximately 52 percent of the range within the next 60 years. Under scenario 3, white pine blister rust will infect approximately 88 percent of the range within the next 60 years (Service 2021, p. 107). Thus, under the three scenarios, within one generation, white pine blister rust will infect 52 to 88 percent of the range. These impacts will reduce the ability of whitebark pine stands to regenerate following disturbances, such as fire and mountain pine beetle outbreaks.

In addition, the mountain pine beetle currently affects approximately 17 percent of the range. Within the 60-year timeframe, under scenario 1, mountain pine beetle will affect an estimated 31 percent of the range in the absence of other stressors. Under scenario 2, mountain pine beetles will affect an estimated 15 percent of the range within 60 years. Under scenario 3, mountain pine beetles will impact approximately 40 percent of the range within 60 years (Service 2021, pp. 109). These potential impacts from mountain pine beetle infestations, especially when combined with the projected reduced stand health from increased white pine blister rust infection, could further reduce species' resiliency in the future.

Within the 60-year timeframe, a continuation of current trends in high-severity fires (under scenario 1) would not likely severely negatively affect whitebark pine resiliency, redundancy, or representation in the absence of other stressors, as newly burned areas can potentially provide a seedbed for whitebark pine if stands of healthy cone-producing whitebark pine are nearby, resulting in some level of natural regeneration. Similarly, if current trends in high-severity fires continue or increase by 5 to 10 percent (the relatively small projected increase in severe fire under scenarios 2 and 3), high-severity fires alone (in the absence of other stressors) would not be likely to severely negatively affect whitebark pine (Service 2021, pp. 105–106).

In the SSA report, we detail the projected distribution of white pine blister rust, mountain pine beetle, and high-severity fire in each AU under each scenario (Service 2021, pp. 99–110).

Although not specifically analyzed in our projections, the best available science indicates that there are strong synergistic and cumulative interactions between the four key stressors (white pine blister rust, mountain pine beetle, high-severity fire, and climate change), which will increase negative impacts to whitebark pine under all three scenarios. Therefore, our assessment of the future effects of each individual stressor on whitebark pine likely underestimates the total impact of these combined stressors on the species' overall viability. For example, environmental changes resulting from climate change are expected to alter fire regimes, resulting in decreased fire intervals and increased fire severity. More frequent stand-replacing fires will likely negatively affect whitebark pine resiliency by reducing the probability of regeneration in many areas (Tomback et al. 2008, p. 20; Leirfallom et al. 2015, p. 1601). Warming trends have also resulted in unprecedented mountain pine beetle epidemics throughout the range of the whitebark pine (Logan et al. 2003, p. 130; Logan et al. 2010, p. 896). In addition, the latest mountain pine beetle epidemic and white pine blister rust have negatively affected the probability of whitebark pine regeneration because both have resulted in severely decreased seed cone production. These and other interactions are described in the SSA report (Service 2021, pp. 110–116).

In summary, the abundance of whitebark pine is projected to decline over time under all three future scenarios we considered. In these scenarios, the rate of decline appeared to be most sensitive to the rate of white pine blister rust spread, the presence of genetically resistant individuals (whether natural or due to conservation efforts), and the level of regeneration (Service 2021, pp. 116–117). Whitebark pine viability has declined over time, and continuation of current trends and synergistic interactions between fire, white pine blister rust, mountain pine beetle, and climate change will continue to result in actual or functional loss of populations. However, we acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales. As a result of the highly heterogeneous ecological settings of this widespread species (*e.g.,* differences in topography, elevation, weather, and climate) and geographic variation in levels of genetic resistance to white pine blister rust, rates of whitebark pine decline will likely vary for each AU.

We predict all AUs will have a reduced level of resiliency in the future. Continued increases in white pine blister rust infection, synergistic and cumulative interactions between white pine blister rust and other stressors, the resulting loss of seed sources, and subsequently lower regeneration will lead to these reductions in resiliency. Whitebark pine remains widely distributed across the spatial extent and ecological settings of its historical range. However, under all three future scenarios, we predict redundancy and representation will decline, as fewer populations persist and the spatial extent and connectivity of the species declines (Service 2021, p. 118).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

See the SSA report (Service 2021, entire) for a more detailed discussion of our evaluation of the biological status of the whitebark pine and the influences that may affect its continued existence. Our conclusions in the SSA report, which form the basis for the determination below, are based upon the best available scientific and commercial data.

Conservation Efforts and Regulatory Mechanisms

There are a variety of regulatory mechanisms, as well as management and restoration plans, in place that benefit or affect whitebark pine trees, as described in appendix A of the SSA report (Service 2021, pp. 119–144). Due to the broad distribution of whitebark pine in the United States and Canada, management of this species falls under numerous jurisdictions that encompass a spectrum of local and regional ecological, climatic, and management conditions and needs. Roughly 70 percent of the species' range occurs in the United States, with the remaining 30 percent of its range occurring in British Columbia and Alberta, Canada. In Canada, the majority of the species' distribution occurs on Federal or provincial Crown lands (COSEWIC 2010, p. 12). In the United States, approximately 88 percent of land where the species occurs is federally owned or managed. The majority is located on USFS lands (approximately 74 percent). The bulk of the remaining acreage is located on National Park Service lands (approximately 10 percent). Small amounts of whitebark pine also can be found on Bureau of Land Management lands (approximately 4 percent). The remaining 12 percent of the species' range is under non-Federal ownership, on State, private, and Tribal lands (Service 2021, pp. 15–16).

Twenty-nine percent of the range of whitebark pine within the United States (Service 2021, p. 16) is designated

wilderness under the Wilderness Act of 1964 (Wilderness Act; 16 U.S.C. 1131–1136). The Wilderness Act states that wilderness should be managed to preserve its natural conditions and yet remain untrammeled by humans. This designation limits management options and conservation efforts in those areas to some degree. While the Wilderness Act does not directly allow for treatment of the impacts of white pine blister rust or mountain pine beetle epidemics, it does allow for some ''minimal actions'' to address management needs. How the Wilderness Act is implemented can vary between agencies, regions, or even between species. For a more detailed discussion of how the Wilderness Act influences the management of whitebark pine, see the SSA report (Service 2021, pp. 134–135).

Several management and restoration plans have been developed for specific regions or jurisdictions to address the task of conserving and restoring this widespread, long-lived species (Service 2021, p. 119). Conversely, some areas within the range of whitebark pine do not have a specific management plan for whitebark pine (*e.g.,* central Idaho) (Service 2021, p. 119). Within the United States, management actions in these areas without a species-specific management plan would generally follow established forest or vegetation-management plans developed under the National Forest Management Act of 1976 (16 U.S.C. 1600(note)), which amended the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 *et seq.*), or other similar policies (*e.g.,* National Forest land management plans, National Park Service vegetation-management plans). Additionally, many organizations, States, agencies, Tribes, and local entities have begun to implement local conservation and restoration programs for whitebark pine, including conservation on private lands, State Forest Action Plans, and other small-scale restoration projects.

In Canada, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) designated whitebark pine as ''endangered'' under the Canadian Species at Risk Act (SARA) on June 20, 2012, due to the high risk of extirpation. This listing provides protection from harming, killing, collecting, buying, selling, or possessing whitebark pine on Federal Crown land.

See the SSA report for a description of management and restoration plans currently in place or under development, and some of their accomplishments (Service 2021, pp. 119–125). While these programs may provide localized benefits to individuals or populations, given whitebark pine's vast geographic range and the ubiquitous presence of white pine blister rust, there is currently no effective means to control the disease and its cumulative impacts with other stressors on a species-wide scale through any regulatory or nonregulatory mechanism.

Summary of Comments and Recommendations

On December 2, 2020, we published a proposed rule in the **Federal Register** (85 FR 77408) to list the whitebark pine as a threatened species and adopt a 4(d) rule for the species, which applies the prohibitions and provisions of section 9(a)(1) of the Act to the species with certain, specific exceptions. We requested that all interested parties submit written comments on the proposed rule by February 1, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, Tribal entities, and other interested parties, and invited them to comment on the proposed rule. On December 9, 2020, we published a notice in USA Today inviting the public to comment. We did not receive any requests for a public hearing. All substantive information provided to us during the comment period is incorporated directly into this final rule, has been used to clarify the information in our SSA report, or is addressed (by topic) below. We received numerous comments sharing views and strategies on the implementation of recovery efforts for the species; we noted these for our future reference in recovery planning but did not respond to them herein because they are outside the scope of this rulemaking. More generally, we do not summarize or respond to non-substantive comments, comments outside the scope of our rulemaking (*e.g.,* detailing areas for future research), or any comments merely expressing support for our finding.

Peer Review Comments

We reviewed all comments we received from peer reviewers during the proposed rule stage for substantive issues and new information regarding the information contained in the SSA report. The peer and technical reviewers generally concurred with our methods used to determine, and conclusions drawn from the available information regarding, the status and biology of whitebark pine. In some cases, they provided additional information, clarifications, and suggestions to improve the final SSA report. The reviewers also provided new references or corrected existing references we cited in our SSA report; we revised or included relevant references, as appropriate. We summarize the additional substantive feedback we received from peer reviewers below.

Comment 1: One peer reviewer referenced figure 1 in the SSA (Service 2021, p. 17) and asked us to identify the grid cell size.

Our Response: The map in this figure is a vector dataset; therefore, there is no grid cell size. The whitebark pine range dataset was created by compiling various occurrence and distribution data. In order to match the methodology of the Canadian whitebark pine range dataset that was available to us, we used the same methodology in the development of our overall whitebark pine range dataset. This methodology included applying a 6-kilometer (3.7-mile) buffer around all occurrence and distribution data to approximate the range of the species.

Comment 2: A peer reviewer requested that we either clarify or change the name of the AU referred to as the U.S. Canadian Rockies, which includes areas in the United States (south of the U.S./Canada border).

Our Response: The AUs were generally based on Level 3 Ecoregions. Most AU names stem from the names of those ecoregions. The Canadian Rockies ecoregion spans across the U.S./Canada border. We divided this ecoregion into a U.S. portion and a Canadian portion to reflect differences in management and legal status. We named the U.S. portion of this ecoregion the ''U.S. Canadian Rockies'' to distinguish it from the portion in Canada, which we called the Canadian Rockies.

Comment 3: A peer reviewer presented information and references documenting genetic data to spatially identify populations in the Idaho Batholith, Middle Rockies, and U.S. Canadian Rockies AUs and in a portion of the Northern Rockies AU. They also noted known differences in molecular markers and adaptive variation between the interior and coastal populations of whitebark pine. Despite this information, they indicated that biologically administering populations on a rangewide scale is not appropriate.

Our Response: We recognize that significant genetic work has been completed in the whitebark pine populations in the Idaho Batholith, Middle Rockies, U.S. Canadian Rockies, and Northern Rockies AUs. However, this work does not cover the entire range of the whitebark pine. We lack adequate data on distribution and genetic exchange to precisely map or describe functional populations at a

rangewide scale. Instead, for the purposes of analysis, we discuss resiliency of whitebark pine on the basis of AUs (Service 2021, pp. 65–67).

Comment 4: Two peer reviewers questioned our use of 60 years as the generation time of whitebark pine. One peer reviewer recommended that we use another method for calculating generation time but did not provide an associated reference. This peer reviewer also indicated that many people incorrectly use the age of first reproduction as the generation time. Another provided examples of variation in generation time across the range.

Our Response: We recognize that there are variations and differences in generation time across the range of whitebark pine. In the literature, experts have used a range of time periods to inform whitebark pine generation time; these methods have included average age of first cone production (around 40 years) (Tomback and Pansing 2018, p. 7) and the age trees produce a large cone crop that can attract Clark's nutcrackers (60 to 80 years) (Krugman and Jenkinson 1974, as cited in McCaughey and Tomback 2001, p. 109). Thus, we used 60 years as the average generation time to inform the time intervals of our future condition analysis in the SSA, because this is the lower end of the age range at which the majority of reproductive individuals begin to produce large cone crops and because this is the midpoint of the range of possible generation times in the literature. We did not use average first age of reproduction (*i.e.,* cone production) (around 40 years of age) for our generation time. The average of the ages of reproductive maturity of the two whitebark pine populations one peer reviewer provided (50 and 70 years) results in the generation time we used: 60 years. Our use of 60 years also aligns with the COSEWIC's analysis of generation time using International Union for Conservation of Nature's (IUCN) guidelines (IUCN 2008, pp. 28–31, as cited in COSEWIC 2010, pp. 12–13). COSEWIC used the most appropriate method for plants with seed banks; this method calculates generation time as the juvenile period (age of first reproduction) plus median time to germination. They evaluated the age at which whitebark pine can first begin to produce cones, the age at which whitebark pine trees begin sizable cone production, and the time it takes for a seed in the seed bank to germinate (COSEWIC 2010, pp. 12–13). Their evaluation validated the use of approximately 60 years as the generation time for whitebark pine.

Comment 5: A peer reviewer reported that some data indicate patterns of decrease or periods of no increase in white pine blister rust prevalence. They also mentioned that fire and mountain pine beetles can alter the rate of white pine blister rust infection.

Our Response: We acknowledge there is uncertainty regarding rates of white pine blister rust in the future, and that there is currently, and will continue to be, variation in infection rates across the range of the species; however, the majority of the literature shows white pine blister rust will continue to spread and intensify (Service 2021, pp. 44–45, 48). Additionally, we note that in areas where white pine blister rust has resulted in significant mortality, white pine blister rust could show a decrease in rate of spread because few live trees remain to be hosts.

Comment 6: A peer reviewer questioned why we did not include data from the USFS forest health protection hazard map in our analysis of the current conditions of white pine blister rust.

Our Response: While we examined the USFS's National Insect and Disease Risk and Hazard Mapping (NIDRM) in our analysis of whitebark pine viability, we were unable to include this dataset in our analysis of current conditions (Service 2021, pp. 72–79) because the NIDRM did not analyze the extent of white pine blister rust infection in the United States in the manner we required for our analysis. First, the NIDRM is a modeled dataset that projects levels of potential infection into the future (through the year 2027); it is not intended to characterize observed current levels of infection. Second, to have a consistent metric that allowed for comparison of white pine blister rust infection levels between the United States and Canada and for comparison of the area affected by white pine blister rust with the area affected by other stressors, we needed a measurement of white pine blister rust infection as a proportion of the species' range (*e.g.,* twenty percent of the species' range in a particular AU is infected with white pine blister rust). NIDRM projects white pine blister rust infection in terms of basal area affected (*i.e.,* the density of trees affected in a given area), rather than the total acres affected; therefore, it did not provide the consistent measure of white pine blister rust infection that we could use to calculate the current proportion of whitebark pine range infected with white pine blister rust. For these reasons, the USFS advised that this dataset could not be accurately applied to our analysis of current or future condition, given our specific needs. Instead, to characterize the current distribution of white pine blister rust infection in the United States, we used a much more informative white pine blister rust estimate modeled dataset developed by the USFS based on survey information from the USFS and the Whitebark and Limber Pine Information System (WLIS) (Service 2021, pp. 76–78).

Comment 7: One peer reviewer questioned the accuracy of our summary of white pine blister rust incidence in the Sierras AU (Service 2021, p. 79, figure 11).

Our Response: We confirmed our incidence rates with the literature the reviewer provided and other literature. While incidence rates may be higher in smaller portions of the AU, the overall incidence rate for the AU is reported accurately in the SSA report.

Comment 8: One peer reviewer indicated that whitebark pine has more adaptive capacity with respect to climate change than we acknowledged in our analysis.

Our Response: Our SSA report already included information explaining that whitebark pine has a comparatively high level of genetic diversity and one of the largest ranges of any of the five-needle white pines in North America. Therefore, we acknowledge in the SSA report that the species should have some adaptability to changing climatic conditions, as this peer reviewer implies (Service 2021, p. 59).

Comment 9: Two peer reviewers expressed uncertainty regarding whether the projected future condition of the species was adequately addressed in our future scenarios. They provided localized examples where parts of our future scenarios may overestimate or underestimate the distribution of stressors.

Our Response: We recognize that our projections of each of the stressors are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale). We acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales. We also recognize that as a result of the highly heterogeneous ecological settings of this widespread species (*e.g.,* difference in topography, elevation, weather, and climate) and geographic variation in levels of genetic resistance to white pine blister rust, trajectories for rates of whitebark pine decline will likely vary for each AU. There is also inherent uncertainty in any projection of future conditions. In the SSA report, we discuss in detail specific areas of uncertainty that could lead to overestimates (species viability appears better than it actually is) or

underestimates (species viability appears worse than it actually is) of viability (Service 2021, pp. 92–95).

However, despite the limitations inherent in our future condition analysis, we have relied on the best available science to examine the status of whitebark pine at a rangewide scale. Our projections are based on long-term geospatial data sets and a large body of empirical data, and our multiple scenarios encompass the full range of conditions that could plausibly occur (Service 2021, pp. 96–98). We also note that our results are generally consistent with other modeling efforts for the species, all of which project continued decline of whitebark pine (*e.g.,* Angeli and McGowan, in prep., entire; Keane et al. 2017b, entire; Hatala et al. 2011, entire; Warwell et al. 2007, entire).

Comment 10: A peer reviewer questioned how we could interpret cause and effect from our future-scenario models when more than one stressor varied in each scenario. They also stated that too many variables varied across the scenarios to produce statistically robust contrasts between scenarios.

Our Response: We used the best available data to account for uncertainty in potential future conditions by covering a breadth of future scenarios that could plausibly occur within the range of whitebark pine. In our future scenarios, each stressor was modeled separately in a simplified (deterministic) approach in Microsoft Excel (Service 2021, pp. 99–104). We modeled potential future extent of three key stressors; we did not infer any cause or effect because we did not model how the geographic extent of these stressors would translate to changes in the distribution of whitebark pine. Given the detrimental impacts each of these three stressors has on the species, we assumed that a broader distribution of one or more key stressors would result in a decreased distribution of healthy whitebark pine populations (*i.e.,* lower resiliency, redundancy, and representation). In the SSA report, we provide a detailed account of the assumptions and uncertainties involved in this modeling (Service 2021, pp. 92–95).

Comment 11: A peer reviewer questioned why we did not include climate-change projections or models as part of our future scenarios. They also noted that climate change was not modeled over the entire 180-year period. Two peer reviewers indicated that our future projections may not be applicable across all whitebark pine populations within a particular AU given variation in projected climate change; they expressed concern regarding our assumptions that stressors will increase or decrease uniformly across an entire AU in the future. Specifically, these peer reviewers suggested that we should conduct finer-scale analysis of changing climate conditions across the west to better capture population-level variation in how climate and stressors could change throughout the range of the species in the future.

Our Response: Climate change is understood to affect whitebark pine principally through its effect on the magnitude of the other three key stressors and was therefore included in our future projections as an indirect impact to whitebark pine resilience by modifying the rate of change in the other stressors (Service 2021, p. 90). Given that we modeled climate-induced changes in these other stressors 180 years into the future, we examined the indirect effects of climate change over the entire 180-year modeling period.

We also recognize that our projections of each of the stressors are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale). Given the extensive distribution of whitebark pine, current impacts from stressors and levels of conservation efforts are highly variable across the range. Because of the difficulty identifying an average rangewide magnitude of key stressors, we analyzed current and future conditions of whitebark pine by AU under varying scenarios to assess a range of possible conditions. Our analysis examined area of impact for all stressors at the AU scale to abate variation and limitations within the data, and to have a comparable analysis across all stressors. All future scenarios may not be equally likely, but all are plausible, when considered at the rangewide scale, given the range of values presented for each stressor in the best available scientific information. We acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales; this localized information will be important to consider when planning future recovery actions.

Comment 12: A peer reviewer questioned the timing of mountain pine beetle outbreaks in our future scenarios (*i.e.,* recurring every 30 years), given the slow growth rate of whitebark pine trees. They noted that it takes 25 to 30 years for a whitebark pine tree to grow to approximately 1.0- to 3.0-cm (0.4- to 1.2-in) diameter at breast height (dbh). Thus, they recommended that a longer time frame between mountain pine beetle outbreaks in the future scenarios would be more plausible and appropriate.

Our Response: We adjusted the parameters of our future scenarios to model mountain pine beetle outbreaks occurring every 60 years, rather than every 30 years. This is the minimum time it would likely take for enough individual trees in a previously attacked whitebark pine population to achieve diameters large enough to facilitate successful mountain pine beetle brood production at epidemic levels (Service 2021, p. 96). We then revised our analyses to project the extent of mountain pine beetle outbreaks under each future scenario, based on this new timeframe.

Comment 13: One peer reviewer stated that our predicted residence times of white pine blister rust infection, which were based on assessments of others' models, were incorrect or misleading, especially in the short term. They also stated that one of the models we referenced (Hatala et al. 2011, entire) assumed that white pine blister rust infection equaled mortality.

Our Response: We summarized the results from several models developed to predict residence times of white pine blister rust infection and project the long-term persistence of whitebark pine. These models looked at varying time frames, but most included long-term results. We find that these models present the best available science on potential impacts of white pine blister rust. The modeling effort by Hatala et al. (2011, entire) analyzed four possible white pine blister rust dynamic infection models and predicts that, on average, whitebark pine trees live with white pine blister rust infection for approximately 20 years before succumbing to the disease. Because this analysis shows that a whitebark pine tree can live, on average, for 20 years with white pine blister rust infection, the model could not have assumed that infection with white pine blister rust equated to immediate death of the whitebark pine tree (Service 2021, p. 48). In our SSA report, we discuss the various impacts that white pine blister rust has on whitebark pine and the various responses whitebark pine has to the infection, only one of which is mortality (Service 2021, p. 44). However, outcomes besides mortality can still have negative effects; for example, an infected whitebark pine tree that continues to survive enables the white pine blister rust fungus to produce spores, thereby continuing to perpetuate and intensify the disease (Service 2021, p. 44). Thus, while we

did not assume areas experiencing white pine blister rust infection equated to areas with dead trees, we find that areas with higher rates of infection are more likely to present negative outcomes for the species.

State Agency Comments

We received comments from State agencies on the proposed listing and 4(d) rule during the open public comment period. We summarize and respond to these below.

Comments on Biology, Ecology, Range, Distribution, or Population Trends

Comment 14: The California Department of Fish and Wildlife provided maps or data points of where they have observed whitebark pine. Some of this information specifically indicated elevations at which the species occurs throughout different portions of its range, including areas in Washington, Oregon, and California.

Our Response: Our range maps and analysis in the SSA incorporated and considered the elevations at which the species occurs throughout its range, which these commenters referenced. While the whitebark pine's range was depicted at a coarse scale in the SSA report, it encompasses all known occurrences and the current distribution of whitebark pine (Service 2021, p. 17). Thus, these data from the California Department of Fish and Wildlife did not represent new information, nor did they change our analysis or conclusions.

Comments on Stressors

Comment 15: The California Department of Fish and Wildlife stated that the geographic isolation of whitebark pine stands has resulted in low genetic diversity between populations (*i.e.,* greater genetic diversity within populations than between them) and, as a consequence, whitebark pine demonstrates high rates of self-pollination and biparental inbreeding.

Our Response: Whitebark pine has higher rates of inbreeding than most other wind-pollinated species, likely due to Clark's nutcracker dispersal; Clark's nutcracker can deposit clumps of related seeds in the same vicinity, which leads to close proximity of related mature trees (Keane et al. 2012, p. 14; Service 2021, p. 85). However, whitebark pine still exhibits a high level of genetic diversity across its range, similar to other widespread tree species (*e.g.,* Mahalovich and Hipkins 2011, pp. 127–129; Service 2021, pp. 59, 85).

Comment 16: The California Department of Fish and Wildlife noted that timber harvest should be considered a threat to whitebark pine because timber-harvest projects on private lands have occurred in areas where whitebark pine is present. They asserted that there is potential for direct and indirect impacts on whitebark pine from timber harvest activities such as tree falling and skidding of intermingled commercial species, landing construction, road construction, site preparation, and artificial regeneration.

Our Response: In the SSA report, we acknowledge numerous factors that operate on whitebark pine at more local scales (see appendix B in the SSA report, Service 2021), affecting individuals or localized areas; however, these factors are likely not driving population dynamics of whitebark pine on a rangewide scale or at the species level. Further, as we discuss in Provisions of the Final 4(d) Rule, below, whitebark pine is not commercially harvested, and while timber harvesting could potentially affect individual trees or local areas, we found no threats at the species level resulting from timber harvest.

Comments on Modeling Analysis and Future Projections

Comment 17: The State of Idaho recommended we use a percentage of tree mortality to model potential mountain pine beetle effects in the future-scenario analysis in our SSA report and proposed rule. Specifically, they stated that the Service should distinguish between percent mortality (trees killed in a mountain pine beetle epidemic) and the percent of whitebark pine's range affected by a mountain pine beetle epidemic.

Our Response: Our future-scenario models were derived from data obtained from aerial surveys, which represent the best available information on mountain pine beetle infestations but are not appropriate for estimating the number of individual whitebark pine trees killed by mountain pine beetles. However, they are very useful for determining a minimum number of hectares within the whitebark pine's range that mountain pine beetles have affected over time (*i.e.,* recorded areas of beetle kill during surveys). Because mountain pine beetles only attack mature trees, the effects of mountain pine beetle attacks observed during aerial surveys can be interpreted as the loss of seed-producing mature trees (Service 2021, p. 80).

Comments on Section 4(d) Rule and Post-Listing Management

Comment 18: The State of Idaho expressed concern about the potential implications of the whitebark pine listing on forest management, sharing that States within the range of the species must be able to take action to limit high-severity fire, to address insect and disease outbreaks, and to improve overall forest health without the fear of litigation for violating the Act. The California Department of Fish and Wildlife stated that some whitebark pine stands (*i.e.,* on the Modoc and Inyo National Forests) occur in areas where active vegetation management, primarily in the form of restoration, is occurring. In contrast to Idaho, the Wyoming State Forestry Division expressed that because 88 percent of whitebark pine is found on Federal land, human interaction is not a threat, and forest management is necessary for recovery; therefore, whitebark pine's listing will likely not lead to negative side effects.

Our Response: We have developed a species-specific 4(d) rule that is designed to address the whitebark pine's specific threats and conservation needs. We have concluded that the whitebark pine is at risk of extinction within the foreseeable future primarily due to the continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. The 4(d) rule will enhance the conservation of whitebark pine by prohibiting activities that would be detrimental to the species, while allowing the forest-management, restoration, and research-related activities that are necessary to conserve whitebark pine. We recognize that forest managers currently conduct active vegetation and forest management in areas where whitebark pine trees are present. However, we found no threats at the species level resulting from vegetation- or forest-management activities. In fact, forest-management activities can be important to maintaining the health and resiliency of forest ecosystems that include whitebark pine. The exception in our 4(d) rule for forest-management activities on Federal lands, and any relevant future section 7 consultations Federal agencies would conduct on their activities, would likely facilitate the continuation of forest-management activities conducted by or authorized by relevant Federal land management agencies, as long as we reach the conclusion that these activities will not jeopardize the species.

In addition, we emphasize that the listing of whitebark pine and the species' 4(d) rule do not apply new prohibitions to State lands, private lands, or Tribal lands, besides the prohibitions on import, export, sale, and

interstate and foreign commerce. The listing of whitebark pine, and its 4(d) rule, will not change the State of Idaho's ability to conduct forest-management, restoration, or research-related activities on non-Federal lands (*e.g.,* State-owned lands, private lands), as long as these activities comply with other existing laws and regulations.

Comment 19: The State of Idaho requests that we clearly state that preparatory activities associated with implementing silviculture and forest-management activities (*i.e.,* skid trails, roads) also do not ''pose any threat to the whitebark pine in any form,'' given the importance of conducting these silvicultural and forest-management activities in such a way that reduces the risk of high-severity fires, insect infestations, and disease outbreaks.

Our Response: The exception in the section 4(d) rule that covers forest-management, restoration, or research-related activities on Federal properties also covers any preparation that Federal agencies may need to conduct to implement forest-management, restoration, or research safely and effectively. However, Federal agencies will still need to fulfill their section 7 consultation obligations for any forest-management, restoration, or research-related activities, including associated preparatory tasks, even if these activities are excepted from the prohibitions in the 4(d) rule (see response to *Comment 22,* below). The section 7 consultation tools we will develop for the whitebark pine will streamline this consultation process in many cases. Additionally, given that the State of Idaho expressed these concerns, we also emphasize that the listing of the species and its section 4(d) rule do not apply new prohibitions to State lands, private lands, or Tribal lands, outside of the prohibitions on import, export, sale, and interstate and foreign commerce. The listing of whitebark pine and this 4(d) rule will not change the State of Idaho's ability to conduct forest-management, restoration, or research-related activities on non-Federal lands (*e.g.,* State-owned lands, private lands), as long as there is no Federal nexus and these activities comply with other existing laws and regulations.

Comments on Listing Process and Policy

Comment 20: The State of Idaho expressed concern about our application of the Act's definitions of ''endangered species'' and ''threatened species'' in the proposed rule. While our proposed rule stated that we determine that the whitebark pine is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range, Idaho believed this was a misapplication of the definition of a threatened species, which is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given that the text of our proposed rule said whitebark pine was likely to become ''in danger of extinction'' within the foreseeable future, rather than likely to become ''an endangered species'' within the foreseeable future, the State of Idaho believed we incorrectly used the definition of a threatened species. They posited that we were trying to reference and incorporate the definition of an ''endangered species,'' but the final rule should reflect the strict text of the statute's definition of a ''threatened species'' to avoid any confusion.

Our Response: Under the Act, ''threatened species'' is defined as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)); the definition of a ''threatened species'' in the Act thus references and incorporates the definition of an endangered species, which is any species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)). We clearly provide the statutory definitions of ''endangered species'' and ''threatened species'' verbatim under *Regulatory Framework,* above, in this rule. While we state in some places in the proposed rule and this final rule that whitebark pine is ''likely to become in danger of extinction within the foreseeable future,'' rather than ''likely to become an endangered species in the foreseeable future,'' the term ''in danger of extinction'' is in the definition of an endangered species; thus, we merely replaced the term ''endangered species'' with the exact statutory definition of an endangered species, as this incorporation provides greater clarity to the public. Thus, we are stating in this rule that, while we do not find whitebark pine meets the definition of an endangered species, we find it does meet the definition of a threatened species under the Act, which we clearly articulate under Determination of Whitebark Pine Status, below.

Comments on Conservation Activities and Recovery

Comment 21: Many State and Tribal commenters submitted comments detailing past and future conservation actions for the species.

Our Response: We recognize ongoing and future conservation efforts for this species. A variety of regulatory mechanisms, as well as management and restoration plans are in place, that currently benefit or influence whitebark pine, as described in the SSA report (Service 2021, pp. 119–125) and further detailed in these public comments. Many of these efforts have had positive impacts on the species on local or regional scales. However, given the vast geographic range of the species, the ubiquitous presence of white pine blister rust, and the lack of an effective means to control the disease, regulatory or nonregulatory mechanisms have an inherently limited ability to reduce the influence of white pine blister rust, and its cumulative impacts with other stressors, on a species-wide scale.

Federal Agency Comments

We received comments from Federal agencies on the proposed listing and 4(d) rule during the open public comment period. We summarize and respond to these below. Where a State and Federal agency raised similar concerns, we have included the State agencies' concerns along with the Federal agencies' concerns in a single summary below.

Comments on Section 4(d) Rule and Post-Listing Management

Comment 22: The Inyo National Forest requested that our proposed 4(d) rule more clearly explain the process a Federal agency would follow for section 7 consultation. They asked whether exceptions under the 4(d) rule would absolve Federal agencies of consultation requirements or whether excepted activities could be considered to have ''no effect'' on the species for the purposes of section 7 consultation given that the Service concludes in the proposed rule that these activities ''are not a threat to whitebark pine in any form.'' The State of Idaho also raised questions on how section 7 consultation relates to section 4(d) rules and asked that section 7 consultation for silviculture and forest-management activities be exempted under the final 4(d) rule.

Our Response: Section 4(d) rules cannot and do not absolve Federal agencies of their consultation requirements under the Act. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated

critical habitat of such species. As a result of these provisions in the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must initiate consultation with the Service. Federal actions that do not affect listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

The trigger for consultation is whether a Federal action may affect a listed species or its critical habitat, not whether the action would violate prohibitions in any applicable 4(d) rule; thus, species-specific 4(d) rules, regardless of the activities they prohibit or allow, cannot change this requirement to consult. If a Federal action may affect a listed species, section 7(a)(2) of the Act requires consultation to ensure that the activity is not likely to jeopardize the species, regardless of the substance of any applicable 4(d) rule. Thus, if a Federal agency's action may affect whitebark pine, it must fulfill section 7(a)(2) consultation obligations in accordance with 50 CFR part 402. Unless the Service concurs with a Federal agency's determination that its action is not likely to adversely affect a listed species, formal consultation with the Service is required on all actions that may affect a listed species, even if the action will not result in a violation of a prohibition under the 4(d) rule. For instance, although removal and reduction to possession of whitebark pine in the course of forest management conducted by a Federal agency are not prohibited under the 4(d) rule, these types of activities are still subject to section 7(a)(2) consultation requirements if they may affect the species. Additionally, if a Federal agency determines that its action is not likely to adversely affect a listed species or its critical habitat, it must still receive the Service's written concurrence, even if its activity, and the result of its activity, are not prohibited by the 4(d) rule.

While we state in this rule that forest-management, restoration, and research-related activities do not pose a species-level threat to the whitebark pine, that does not imply these activities will never affect individuals or populations of the species. It is possible that an activity excepted under this 4(d) rule may affect individual whitebark pine trees or populations. In other words, in excepting forest-management, restoration, and research-related activities from the prohibitions imposed by the 4(d) rule, we are not stating that these activities have no effect on individual whitebark pine trees or populations under all circumstances. Thus, while we do except forest-management activities given that these activities are compatible with whitebark pine's conservation at the rangewide scale, we cannot remove the obligation of Federal agencies to consult with us if their forest-management activities may affect individual whitebark pine trees or populations.

However, even though 4(d) rules do not remove or alter Federal agencies' section 7 consultation obligations, we can and will develop tools to streamline consultation on Federal actions that may affect the whitebark pine and are consistent with the provisions of the 4(d) rule. We have added additional detail on this relationship between section 7 consultation and section 4(d) rules under Provisions of the Final 4(d) Rule, below.

Comment 23: The Inyo National Forest and public commenters expressed concern about new regulatory burdens that could prevent the USFS from conducting forest-management, research, and restoration activities, especially if they need to conduct consultation on excepted activities under the 4(d) rule, as this can take time and money away from actual project implementation. Public commenters likewise asked the Service not to impede essential active forest management in National Forests and elsewhere.

The Inyo National Forest requested that, if the Service were to develop a programmatic consultation for whitebark pine, it develop a process that is effective in protecting the species and monitoring its status, but also streamlined and efficient such that it does not hinder land management agencies' ability to conduct forest management activities that would be excepted under the 4(d) rule. The State of Idaho also requested that we create a conference report to help guide decision makers and planners, reduce the section 7 consultation burden, and add efficiencies to the implementation of forest management that benefits the species.

Our Response: In the section 4(d) rule for whitebark pine, we provide an exception to otherwise applicable prohibitions for forest-management, restoration, and research-related activities. This 4(d) rule will enhance the conservation of whitebark pine by prohibiting activities that would be detrimental to the species, while allowing the forest-management, restoration, and research-related activities that are necessary to conserve whitebark pine; these forest-management, restoration, and research-related activities maintain and restore forest health on the Federal lands that encompass the vast majority of the species' habitat within the United States.

However, even with this exception in the 4(d) rule, Federal agencies must comply with relevant section 7 consultation requirements on any forest-management, restoration, or research-related activities that may affect whitebark pine, including activities that may affect individual trees or populations. Even though 4(d) rules do not remove or alter Federal agencies' section 7 consultation obligations, a 4(d) rule can facilitate simplification of formal consultations. For example, consistent with the discussion in the preamble to our August 27, 2019, final rule regarding prohibitions for threatened species (84 FR 44753, see p. 84 FR 44755), in choosing to except removal, damage, or destruction associated with certain activities in a 4(d) rule, we have already determined that these activities are compatible with whitebark pine's conservation at the rangewide scale (even if these activities may affect individual trees or populations), which can streamline our analysis of whether an action would jeopardize the continued existence of the species, making consultation more straightforward and predictable.

We are developing tools to streamline consultation on Federal actions that may affect the whitebark pine and are consistent with the provisions of the 4(d) rule. In combination with these streamlined section 7 tools, the protections in this section 4(d) rule should not discourage or impede effective forest management that promotes the conservation of the species and the ecosystems upon which it depends.

Tribal Comments

We received comments from Tribes on the proposed listing and 4(d) rule during the open public comment period. We summarize and respond to these below.

Comments on Section 4(d) Rule and Post-Listing Management

Comment 24: The Confederated Salish and Kootenai Tribes expressed their expectation that listing whitebark pine as a threatened species would not conflict or obstruct in any way their restoration strategies and goals, including the consumption of whitebark pine seeds in traditional Native American ceremonies.

Our Response: We recognize the importance of whitebark pine seeds to the cultural and religious practices of Tribal Nations. It is not our intent to limit Tribes' contributions to the species' restoration or to obstruct Tribes' ability to incorporate the species into their traditional practices. Because the prohibitions in the section 4(d) rule do not apply outside of Federal properties, the 4(d) rule will not affect Tribes' ability to conduct whitebark pine restoration on Tribal lands. The 4(d) rule as proposed also would have allowed consumption of seeds grown and collected on Tribal lands. However, the 4(d) rule as proposed would have prohibited such collection on areas under Federal jurisdiction (*e.g.,* National Forests) without further authorization. Tribal collection of whitebark pine seeds from Federal lands for the purposes of ceremonial use or traditional consumption will not negatively affect whitebark pine at a rangewide scale, given the limited amount of collection that will likely occur (Service 2021, p. 34). Given that it was not our intent to infringe on Tribes' ability to collect whitebark pine seeds for ceremonial or traditional use and because this collection does not present a threat to the species, we have added an exception to the final 4(d) rule to allow for this Tribal collection on Federal lands. However, if further authorization is required from relevant Federal agencies (*e.g.,* if the USFS needs to issue a permit to allow a Tribal member to collect seeds on a National Forest), this further authorization would present a Federal nexus. Thus, in this example, the USFS would still need to comply with relevant section 7 consultation obligations before issuing a permit for a Tribal member to proceed with their collection of seeds.

Comment 25: The Nez Perce Tribe expressed concern that there is currently inconsistency in the regulatory measures and management for whitebark pine both across and within Federal land management agencies. The Tribe expressed concern about the continued persistence of whitebark pine without ''standardized and adequate protection and conservation measures.'' They specifically expressed concern about how the Stibnite Gold Mine Project in Idaho could affect whitebark pine if the species lacks Federal protection because that project has the potential to remove up to 1,027 whitebark pine trees and impact up to 258 ac (104 ha) of occupied habitat.

Our Response: When the listing of whitebark pine as a threatened species under the Act becomes effective (see **DATES**, above), the protections provided in the 4(d) rule and the systems in the streamlined section 7 processes we develop for the species will provide consistency in the regulatory measures relevant to whitebark pine (see Provisions of the Final 4(d) Rule, below). For example, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. As a result of these provisions in the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must initiate consultation with the Service. Thus, because we are listing whitebark pine as a threatened species under the Act, before Federal agencies can authorize development projects on Federal land, action agencies will need to consider whether these projects may affect whitebark pine (in addition to any other listed species in the action area). If the activities may affect any listed species, the Federal agency must initiate consultation with the Service. Therefore, section 7 consultation processes will ensure that development and extractive activities on Federal lands do not jeopardize the continued existence of whitebark pine, or any other listed species. We have not yet received a biological assessment for the Stibnite Gold Mine project, a proposed mining operation on Federal public land (namely USFS land) and private land in Idaho, and thus section 7 consultation has not yet occurred for the project; when it does occur, this consultation process will consider effects to whitebark pine, and any other listed species, as described above.

Public Comments

We received more than 4,000 comments from the general public on the proposed listing and 4(d) rule during the public comment period. We summarize and respond to these below. We do not, however, repeat issues that we have already addressed above; we address only new issues raised that were not raised by peer reviewers, State or Federal agencies, or Tribes.

General Comments About Listing

Comment 26: Many commenters stated their view that whitebark pine warrants listing as ''endangered'' rather than ''threatened.'' In support of this assertion, these commenters pointed to (1) whitebark pine's vulnerability to climate change; (2) current and historical threats that are ''pervasive and intensifying,'' highlighting the discussion of these threats in the SSA report; (3) the fact that stressors have worsened since the Service's substantial 90-day finding on the species (75 FR 42033; July 20, 2010); and (4) the ''endangered'' listing status in Canada. One commenter referenced the statistic that 51 percent of all standing whitebark pine in the United States are dead as a result of a combination of threats as evidence of the ''imminent peril of extinction the species faces'' as further support for listing the species as endangered.

Our Response: We find that the whitebark pine does not meet the Act's definition of an ''endangered species'' because the species is still widespread throughout its extensive range, because a large number of trees will continue to thrive and reproduce for decades (given the species' long lifespan), and because there are some levels of genetic resistance to white pine blister rust across the range. The species' current levels of resiliency rangewide provide sufficient ability to withstand stochastic events such that it is not currently at risk of extinction. In addition, although there is uncertainty regarding how quickly white pine blister rust, the primary stressor, will spread within the three southwestern AUs (the Sierras, Basin and Range, and Klamath Mountains AUs) in the future, white pine blister rust currently occurs at low levels in these areas, adding to the whitebark pine's current resiliency. In addition, the species currently has sufficient redundancy and representation to withstand catastrophic events and maintain adaptability to changes, particularly in the southwestern part of the range, and is not at risk of extinction now. However, we expect that the stressors, individually and cumulatively, will reduce resiliency, redundancy, and representation within all parts of the range within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we determine that the whitebark pine is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future, throughout all of its range.

Our analysis in the SSA report and in the proposed rule included the statistic that one commenter referenced regarding the percent of standing whitebark pine in the United States that is dead (Goeking and Izlar 2018, p. 7; Service 2021, p. 78; 85 FR 77408, December 2, 2020, p. 77415). However, even considering these losses of trees

due to disease, we find that the whitebark pine is not endangered because the species is still widespread throughout its extensive range.

In Canada, the COSEWIC designated whitebark pine as ''endangered'' under the Canadian SARA on June 20, 2012, due to the high risk of extirpation. However, the definitions of ''endangered species'' and ''threatened species'' under SARA differ from those under the Act, and Canada uses different processes to evaluate species' status. Thus, even while Canada determined that whitebark pine met the definition of an ''endangered species'' under SARA in 2010, that does not mean whitebark pine also meets the different definition of an ''endangered species'' under the Act. In fact, based on the best available scientific and commercial data, we have determined that whitebark pine meets the definition of a threatened species, rather than endangered species, under the Act primarily due to the continued increase in white pine blister rust infection and associated mortality; synergistic and cumulative interactions between white pine blister rust and other stressors, such as climate change; and the resulting loss of seed source.

Comment 27: One commenter stated that because the SSA report makes no conclusive finding regarding the probability of becoming endangered, because the SSA report indicates that the species is still widespread and expected to persist, and because any potential declines will vary regionally, the Service cannot argue that the species is likely to become endangered throughout a significant portion of its range.

Our Response: We find that the whitebark pine is not currently in danger of extinction because the species is still widespread throughout its extensive range, as this commenter emphasizes, because a large number of trees will continue to thrive and reproduce for decades (given the species' long lifespan), and because there are some levels of genetic resistance to white pine blister rust across the range.

We do not argue that the species will become endangered in a significant portion of its range (see *Status Throughout a Significant Portion of Its Range,* below). However, contrary to what is stated in the comment, it is not the role of an SSA to make conclusive findings regarding endangerment, and the fact that future declines will vary regionally is not inconsistent with our determination that the species is likely to become endangered in the foreseeable future. In the SSA report, we recognize that our projections of each of the stressors are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale) (Service 2021, p. 116). Therefore, based on these rangewide projections of the future influence of the four primary stressors, we find that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Comment 28: Many commenters expressed opposition to the listing of whitebark pine, as they felt the Act either would not provide any benefit to the species or could even hinder efforts to conserve the species. One commenter claimed that listing the species under the Act will not help address the major threats of disease, fire, or climate change. Multiple commenters expressed that listing the whitebark pine could be detrimental to the species because it would make it more difficult to carry out important restoration efforts.

Our Response: Neither the Act's definitions of ''endangered species'' and ''threatened species'' nor the statutory factors that we must consider when applying those definitions allow us to consider the effects of listing when we determine the status of a species (16 U.S.C. 1532(6) and (20), 16 U.S.C. 1533(a)(1)). The statute states that we must make listing determinations based solely on the basis of the best available scientific and commercial information. Therefore, the question of whether there may be some positive benefit to the listing cannot by law enter into the determination. Once a species is listed as either endangered or threatened, the Act provides many tools to advance the conservation of listed species. Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. Specifically, section 4(f) of the Act requires us to develop and implement recovery plans for the conservation of endangered and threatened species. For more information on the recovery-planning process, see Available Conservation Measures, below.

We have also developed a species-specific 4(d) rule that is designed to address the whitebark pine's specific threats and conservation needs. We have concluded that the whitebark pine is at risk of extinction within the foreseeable future primarily due to the continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. The 4(d) rule will enhance the conservation of whitebark pine by prohibiting activities that would be detrimental to the species, while allowing the forest-management, restoration, and research-related activities that are necessary to conserve whitebark pine; these forest-management, restoration, and research-related activities maintain and restore forest health on the Federal lands that encompass the vast majority of the species' range within the United States. Specifically, the 4(d) rule provides an exception to allow Federal land management agencies to continue managing the forest ecosystems where the whitebark pine occurs and to continue conducting restoration and research activities that benefit the species, as long as these Federal agencies have also complied with all relevant section 7 consultation requirements. These activities include forest-management activities that reduce high-severity fire, address insect and disease outbreak, and improve overall forest health. These activities pose no threat to the whitebark pine at the species level and can contribute to the species' conservation into the future. These prohibitions and exceptions are further discussed in Provisions of the Final 4(d) Rule, below.

Comment 29: One commenter opposed listing whitebark pine as threatened under the Act because whitebark pine has a large geographical range and is currently abundant and widespread. The commenter also noted that the SSA draws conclusions regarding future declines from a 180-year model that has substantial uncertainties. This commenter also believed the SSA analysis did not adequately account for the degree of variation in potential declines across the wide range of the species.

Our Response: There is inherent uncertainty in any projection of future conditions. However, based on the best available science, there is widespread agreement among whitebark pine experts that all key stressors are likely to continue to affect whitebark pine at levels above current conditions in the future (Service 2021, p. 91). The exact magnitude of effects from each stressor in the future is uncertain, which translates to uncertainty in predictions of whitebark pine viability in the future,

and that uncertainty increases the further those predictions are carried into the future. In the SSA report, we identify specific areas of uncertainty that could lead to overestimates (species viability appears better than it actually is) or underestimates (species viability appears worse than it actually is) of viability (Service 2021, pp. 92–95, table 8). Our projections are based on long-term geospatial data sets and a large body of empirical data, and our multiple scenarios encompass the full range of conditions that could plausibly occur (Service 2021, pp. 96–98). We also focused our discussion of future viability in the SSA report on the 60-year (approximately one generation) timeframe where our confidence is greatest (Service 2021, p. 99).

We consider the foreseeable future, for the purposes of determining threatened status for whitebark pine, to be within 40 to 80 years. This timeframe encompasses the full range of variation for the length of one generation for whitebark pine. In order to understand future extinction risk, we needed to examine the effects of stressors at least one generation into the future; considering effects of stressors over at least one generation allows us to capture the effects of these stressors on reproduction (*i.e.,* it allows us to discuss whether sufficient reproduction can occur in the future to replace trees lost to various stressors). While we were able to project the extent of stressors more than one generation into the future (*i.e.,* 180 years into the future) in our SSA, we simply extrapolated various rates of spread for three whitebark pine generations. Regardless of how far into the future we could extrapolate the expanding scope of stressors, our confidence is greatest with respect to the range of plausible projected changes to stressors for one generation due to increasing uncertainties in the interplay between disease and species' response (*e.g.,* uncertainties regarding effects on species' genetics in the next generation of trees and how this would affect species' response to stressors, specifically white pine blister rust, in subsequent generations; uncertainties regarding compounding effects on reproduction after the next generation of trees). We can reasonably determine that both the future threats and the species' responses to those threats are likely within this 40- to 80-year timeframe (*i.e.,* the foreseeable future), and we can reasonably rely on predictions over this time frame in determining the future conservation status of the whitebark pine.

In the SSA report, we also recognize that our projections of each of the stressors are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale) (Service 2021, p. 116). Given its extensive distribution, current impacts from stressors and levels of conservation efforts are highly variable across the range. Our analysis examined area of impact for all stressors at the AU-scale to abate variation and limitations within the data, and to have a comparable analysis across all stressors (Service 2021, p. 96). We acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales.

Despite the limitations inherent in our future-conditions analysis, we have relied on the best available science to examine the current and future extent of white pine blister rust infection, mountain pine beetle infestations, and high-severity fire in each AU (capturing some level of variability in resiliency across the range of the species); as a result of the highly heterogeneous ecological settings of this widespread species (*e.g.,* differences in topography, elevation, weather, and climate) and geographic variation in levels of genetic resistance to white pine blister rust, rates of whitebark pine decline will likely vary for each AU in the future (Service 2021, p. 116). We also note that our results are generally consistent with other modeling efforts for the species, all of which project continued decline of whitebark pine (*e.g.,* Warwell et al 2007, entire; Hatala et al. 2011, entire; Keane et al. 2017b, entire; Angeli and McGowan, in prep., entire).

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the whitebark pine is likely to become endangered within the foreseeable future throughout all of its range. This finding is based on anticipated reductions in resiliency, redundancy, and representation in the future as a result of continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. White pine blister rust is already ubiquitous rangewide, and there is currently no effective method to reverse its effects on a meaningful scale.

Comment 30: One commenter recommended that, instead of listing whitebark pine throughout its entire range, we should only list the whitebark pine that occurs in wilderness areas as a threatened species. This commenter claimed that the Act gives the Service the authority to geographically limit the listing in this way because section 4(c)(1) of the Act states that the Lists of Endangered and Threatened Wildlife and Plants shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range (16 U.S.C. 1533(c)(1)). The commenter thus believed the Service had the ability to list whitebark pine in only a portion of its range, specifically the portion in Congressionally designated wilderness areas, even if this portion is not a ''significant portion of the range.'' The commenter believed the Service's current ''significant portion of the range'' policy was ''suspect,'' given that the courts have vacated parts of it; they especially believed the ''all-or-nothing nature'' of the policy, which requires the Service to list a species throughout their entire range even if they only meet the definition of a threatened species in a significant portion, violates the Act. Thus, the commenter believed we should be able to list whitebark pine as threatened in only a portion of its range (the portion in wilderness areas).

Our Response: We must comply with all current regulations, policies, and court opinions when making status determinations under the Act. Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. If we were to find that the species was endangered or threatened in a significant portion of its range, it would result in listing the species under the Act as such throughout all of its range. Thus, even if we found that the species met the definition of an endangered or threatened species only in designated wilderness areas (which we did not), that finding would still result in listing the species throughout the entirety of its range.

We note that this interpretation is required by the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy; 79 FR 37578, July 1, 2014), which by its terms is binding on the Service. Although some aspects of the Final Policy have been invalidated by the courts, this aspect has not. In fact, this aspect of the Final Policy adopts case law that expressly rejects the argument made by the commenter (see 79 FR at 37580).

Comment 31: Commenters expressed concern that the Service did not adequately consider the value of existing conservation efforts in its assessment of the Act's Factor D (the inadequacy of existing regulatory mechanisms). One of these commenters noted that, in the SSA report, the Service dismisses restoration work under the Range-Wide Conservation Strategy by stating that recent accomplishments conducted using this guidance are ''too numerous to detail here.'' They noted that the Service is obligated under section 4(b)(1)(A) of the Act to consider State conservation efforts in its listing determinations. Moreover, they felt the Service did not acknowledge how a listing could interfere with these conservation efforts.

Our Response: The Act requires us to make a determination using the best available scientific and commercial data after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation to protect such species. In evaluating the status of whitebark pine, we considered the numerous ongoing conservation efforts detailed in the SSA report (Service 2021, pp. 119–125). However, while these programs may provide localized benefits to individuals or populations, they do not provide a reduction of the influence of key stressors at the species scale across the more than 32-million-ha (more than 80-million-ac) range of the species. Additionally, despite these existing regulatory mechanisms (Factor D) and voluntary conservation efforts, the stressors have continued to affect the species and are predicted to increase in prevalence in the future. Specifically, white pine blister rust is already ubiquitous rangewide, and there is currently no effective method to reverse its effects on a meaningful scale. Although current planting efforts may be sufficient to restore whitebark pine at some local levels, the current rates appear to be insufficient to address the primary stressor (white pine blister rust) and restore whitebark pine on a scale large enough to ensure its continued viability (Service 2021, p. 47).

The listing of a species does not obstruct the development of conservation agreements or partnerships to conserve the species. Once a species is listed as either endangered or threatened, the Act provides many tools to advance the conservation of listed species. Conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities. Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The specific protective regulations for whitebark pine are discussed in Provisions of the Final 4(d) Rule, below.

Additionally, section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species, which will further collaboration for the recovery of whitebark pine. For more information on the recovery-planning process, see Available Conservation Measures in this rule.

Comments on Biology, Ecology, Range, Distribution, or Population Trends

Comment 32: A commenter noted that there is still much to learn about the successional ecology of whitebark pine. They noted that there are no scientific data supporting the idea that whitebark pine is shade-intolerant or successional to other tree species and that these ideas are anecdotal throughout the literature. They requested that the Service make this clear.

Our Response: We used the best available scientific and commercial data to inform our discussion of whitebark pine's shade tolerance and successional ecology in the SSA report. We recognize that much uncertainty remains in our understanding of whitebark pine ecology, and that variation occurs throughout the wide range of the species. However, based on the best available information, including information provided in the public comments, we find that, in general, whitebark pine shows an intermediate level of shade tolerance and can be outcompeted and replaced by more shade-tolerant trees in the absence of disturbances like fire (Arno and Hoff 1989, p. 6; Service 2021, p. 22). Higher whitebark pine seedling density has been correlated with higher densities of nearby mature healthy whitebark pine, the presence of intermediate amounts of vegetation cover, and lower solar radiation (Leirfallom et al. 2015, p. 1603; Service 2021, p. 26).

Comment 33: One commenter recommended that the Service review specific provided survey reports of whitebark pine for the Klamath, Shasta Trinity, and Modoc National Forests in northern California to ensure our range maps reflect this particular occurrence data.

Our Response: Our range maps and analysis in the SSA report already incorporated the areas of whitebark pine presence that these commenters referenced. While the whitebark pine's range was depicted at a coarse scale in the SSA report, it encompasses all known occurrences and the current distribution of whitebark pine (Service 2021, p. 17). Thus, these data do not represent new information, and they did not change our analysis or conclusions.

General Comments on Four Primary Stressors (White Pine Blister Rust, Mountain Pine Beetle, Altered Fire Regimes, and Climate Change)

Comment 34: Multiple commenters expressed that we put too much emphasis on white pine blister rust as the primary threat to the species and insufficient focus on the potential impacts of mountain pine beetle, altered fire regimes, and climate change; many commenters believed that climate change should instead be identified as the primary threat because it exacerbates other primary stressors, could result in irreversible habitat loss, and will intensify in the foreseeable future. Commenters stated that there is no science to support the identification of white pine blister rust as the primary threat to the species. One commenter noted that the threat of white pine blister rust to whitebark pine is spatially, temporally, and situationally dependent. This commenter stated that, while white pine blister rust may be the primary threat in some areas, in other areas it is a secondary factor. Additionally, they noted that the natural resistance of whitebark pine populations to white pine blister rust is encouraging, indicating that natural selection of resistant whitebark pine could lead to decreasing importance of this stressor in the foreseeable future. One commenter cited several studies when concluding that climate change, mountain pine beetles, fire, and forest succession to shade-tolerant species all represent significant threats to the species and that a more holistic view of the threats is warranted. Multiple commenters worried that our lack of emphasis on these other stressors could result in recovery strategies inadequate to address the threats facing the species or could divert interest and resources away from other threats.

Our Response: Our analysis of the species' status found that the primary stressor driving the status of whitebark

pine is disease (white pine blister rust). White pine blister rust also interacts with other stressors, including predation by mountain pine beetles, altered fire regimes, and climate change; we provided detailed analysis of the extent of the effects of these stressors in our SSA report (Service 2021, pp. 68–110). However, we do not consider altered fire regimes, climate change, or the mountain pine beetle to be the main drivers of the status of the species. In all three future scenarios analyzed in the SSA report, the rate of decline appeared to be most sensitive to the rate of white pine blister rust spread, the presence of genetically resistant individuals (whether natural or due to conservation efforts), and the level of regeneration (Service 2021, pp. 116–117). Given that white pine blister rust led to the largest rangewide reductions in viability in our analysis, and given that there is currently no known remedy, we identified white pine blister as the primary threat to this species.

Additionally, while the frequencies, levels, and heritability of resistance identified to date are very encouraging, we expect the disease to continue to affect whitebark pine in the future. Trees that are rust resistant today only have known resistance to the current white pine blister rust strain (Service 2021, p. 46). Moreover, the number of genetically resistant individuals in some populations on the landscape may be low (Service 2021, p. 88). Management challenges to restoration include remoteness, difficulty of access, and a perception that some whitebark pine restoration activities conflict with wilderness values (Schwandt et al. 2010, p. 242). In addition, the vast scale at which planting rust-resistant trees would need to occur, long timeframes in which restoration efficacy could be assessed, and limited funding and resources will make it challenging to restore whitebark pine throughout its range. Based on modeling results (Ettl and Cottone 2004, pp. 36–47; Hatala et al. 2011, entire; Field et al. 2012, p. 180), we conclude that, in addition to the ubiquitous presence of white pine blister rust across the entire range of the whitebark pine, white pine blister rust infection likely will continue to increase and intensify within individual sites, ultimately resulting in stands that are no longer viable and that potentially face extirpation.

In the SSA report, we capture the variation in white pine blister rust prevalence that these commenters identify, illustrating that average infection levels are lowest in the southern analysis units (Klamath Mountains, Basin and Range, and Sierras); these AUs constitute more xeric habitats (Service 2021, p. 77). We acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales, including variation in white pine blister rust infection; however, our projections of each of the stressors in the SSA are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale) (Service 2021, p. 116). Furthermore, the recovery-planning process will allow managers to address nuances in the species' needs and threats across whitebark pine's range to ensure we deliver appropriate and effective conservation measures in relevant locations.

Comment 35: One commenter recommended that we need to acknowledge that smaller, isolated whitebark pine populations occurring on mountain tops, such as those in the Klamath-Siskiyou and southern Cascade Mountains, are more susceptible to extirpation from repeated high-severity fire, mountain pine beetle outbreaks, and climate change.

Our Response: In the SSA report, we recognize that our projections of each of the stressors are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale) (Service 2021, p. 116). Given its extensive distribution, current impacts from stressors and levels of conservation efforts are highly variable across the range. Our analysis examined area of impact for all stressors at the AU-scale to abate variation and limitations within the data, and to have a comparable analysis across all stressors (Service 2021, p. 96). We acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales. As a result of the highly heterogeneous ecological settings of this widespread species (*e.g.,* differences in topography, elevation, weather, and climate) and geographic variation in levels of genetic resistance to white pine blister rust, rates of whitebark pine decline will likely vary for each AU. Our current- and future-condition analyses illustrate variation in the percent of each AU that is currently or could be affected by various stressors (Service 2021, pp. 68–83, 99–110). We relied on the best available science to examine the status of whitebark pine at a rangewide scale.

Comments on Altered-Fire-Regimes Stressor

Comment 36: A commenter stated that our future-viability scenarios rely on outdated science on the extent of past fires and, therefore, underestimate the likely future increase in annual area burned at high severity within the range of whitebark pine. The commenter noted that we projected a 5 to 10 percent increase in the annual amount of habitat burned at high severity based on research published from 2010 through 2017, but 8 of the 20 largest fires in California history have occurred since 2017, and the 2 largest fires in the Sierra Nevada in 2018 doubled the burned acreage of the previous record. Another commenter noted that large increases in fires have already been documented, particularly in the Northern Rockies where a historically healthy population of whitebark pine occurs.

Our Response: We acknowledge that the fire data in our current-condition analysis, which formed the baseline for our future-condition analysis, only presented acres burned between 1984 and 2016. The 33-year time period covered by this dataset provided the most comprehensive information for fire extent across all AUs in the whitebark pine's range. In the SSA report, we also project the proportion of each AU that high-severity fire is likely to affect in the future. Given current trends and predictions for future changes in the climate, we assume in all scenarios that the frequency of stand-replacing fires will increase, although the magnitude of that increase is uncertain (Keane et al. 2017b, p. 18; Westerling 2016, entire; Littell et al. 2010, entire). Because of that uncertainty, we chose what were likely conservative values of a 5 or 10 percent increase in high-severity fire above current annual levels.

We are aware that there have been several severe fire seasons since 2016, and the study of fire and climate change is a constantly evolving field. Given the large range of whitebark pine, these additional localized fires do not substantially change our overall understanding of the extent of the species' range that has been affected by fire or could be affected in the future. Between 1984 and 2016, a minimum of 1,273,583 ha (3,147,092 ac) of whitebark pine habitat burned in high-severity fires, equating to approximately 5 percent of the species' range within the United States. Data from Monitoring Trends in Burn Severity on acres burned in the United States is now available through 2019. Between 2016 and 2019, an additional 0.8 percent of the

whitebark pine's range within the United States (or 191,459 ha (471,105 ac)) burned at high severity. In other words, nearly 13 percent of the ac that have burned at high severity within the range of whitebark pine in the United States since 1984 burned in the 4 years between 2016 and 2019. This increasing extent of high-severity fire impacts in recent years validates our model assumptions that the frequency of high-severity fire will increase in the future. We find that the three future scenarios we modeled still capture the plausible range of potential increases in high-severity fire into the future.

Thus, these recent fire seasons do not change our conclusions regarding the species' status, especially because white pine blister rust remains the primary driver of species' status. Despite these additional fires, we find that the whitebark pine is not currently in danger of extinction because the species is still widespread throughout its extensive range, because a large number of trees will continue to thrive and reproduce for decades (given the species' long lifespan), and because there are some levels of genetic resistance to white pine blister rust across the range. However, we expect that the stressors, individually and cumulatively, will reduce resiliency, redundancy, and representation within all parts of the species' range within the foreseeable future.

Comment 37: Several commenters found that our assessment of the role of fire in whitebark pine ecosystems was overly simplified and did not account for possible variation in different communities (*e.g.,* climax communities, subalpine communities, trees above treeline). They stated that we did not adequately consider the wide variety of forest types, and therefore fire regimes, in which whitebark pine occurs, and how these could result in differential effects of fire in the future.

Our Response: In the SSA report, we recognize that our future projections of the effects of each of the stressors are based on averages of the best available data applied across very large areas of the range (*i.e.,* at the AU scale) (Service 2021, p. 116). Given its extensive distribution, current impacts from stressors and levels of conservation efforts are highly variable across the range. However, our analysis examined areas of impact for all stressors at the AU-scale to abate variation and limitations within the data, and to have a comparable analysis across all stressors (Service 2021, p. 96). We acknowledge that there may be significant differences and a large degree of variation when examining stressors at smaller landscape or stand scales (*e.g.,* for climax communities of whitebark pine). Although there is variation in the degree to which specific stands have been affected, over the range of whitebark pine, the widespread incidence of poor stand health and reduced reproductive capacity from disease and predation, coupled with changes in fire regimes due to climate change, has compromised and will continue to compromise regeneration of whitebark pine in many cases (Tomback et al. 2008, p. 20; Leirfallom et al. 2015, p. 1601). Overall, these factors increase the likelihood of negative effects to whitebark pine populations from fire, especially from high-severity fires that can cause widespread tree mortality.

Comment 38: One commenter stated that we did not adequately address the threat of prescribed fire on whitebark pine. This commenter indicated that not all forest types where whitebark pine occurs have naturally occurring fires dominated by low-severity fire effects (dynamics that prescribed fire can mimic). Whitebark pine seedlings, saplings, and mature trees in subalpine forests could be negatively affected by prescribed fire, because these forest types are not adapted to a frequent fire regime and plants could experience mortality from this activity. The commenter further noted that whitebark pine is fire-intolerant and not well adapted to fire because it does not exhibit phenotypic characteristics consistent with fire-resistant conifers (*i.e.,* thick bark). However, the commenter noted that fire favors whitebark pine regeneration by creating canopy openings and reducing competing vegetation in areas with an adequate seed source and dispersal mechanisms (Clark's nutcracker seed caching or humans planting whitebark pine seedlings). Whitebark pine seedlings and saplings are likely present in the subalpine forests proposed for prescribed burning. In the absence of fire, this naturally occurring whitebark pine regeneration would continue to occur as an important part of the subalpine ecosystem.

Several commenters also expressed concern regarding the use of prescribed burning in whitebark pine systems, including concerns about the use of prescribed burning in areas where whitebark pine seed sources are scarce or where significant seedling regeneration is occurring.

Our Response: We incorporated additional information on whitebark pine's ability to resist low-intensity fire and the role of low-severity fire in whitebark pine ecology into our discussion of altered fire regimes in the SSA report (Service 2021, pp. 36–37); we also updated our discussion of prescribed fire as a restoration strategy in appendix A of the SSA report, based on information provided in the comments. Although this information is important and relevant to the management and recovery of whitebark pine, it does not significantly affect our understanding of the threats to the species or our listing determination. Any loss of whitebark pine to low-intensity fire (including prescribed fire) would primarily affect individuals at the stand scale and is unlikely to affect the species' broader distribution (Service 2021, pp. 41, 68–69).

We will continue to update our understanding of the role of prescribed burns and low-severity fire as we develop a recovery plan for whitebark pine. The recovery-planning process will ensure that we use the best available science to inform the identification of effective recovery strategies, including appropriate use of prescribed burning.

Comments on Climate-Change Stressor

Comment 39: A commenter stated we did not consider the direct effects of climate change on whitebark pine phenology and that habitat-niche modeling could be used to determine the extent to which climate change is likely to result in habitat loss. Citing recent research, the commenter noted that whitebark pine is predicted to decline throughout its current range under all future climate scenarios and that niche modeling could be used to spatially define and quantify this potential loss of habitat.

Our Response: In the SSA report, we acknowledge that habitat loss is anticipated to occur across the range of whitebark pine due to the direct and indirect effects of climate change (Service 2021, p. 58). Additionally, we acknowledge numerous studies that predict that whitebark pine will decline throughout its range (Service 2021, pp. 61–63). Habitat-niche modeling, as this commenter recommended, can be a useful tool for assessing projected changes in populations or smaller portions of the range of whitebark pine when planning conservation strategies for the species; however, modeling the synergistic effects of the four primary stressors, including climate change, introduces high levels of uncertainty and is beyond the scope of the analysis for our SSA. Although niche modeling may help illuminate localized differences in projected future impacts of climate change throughout the species' range, such refinement would not change our overall determination

that whitebark pine warrants protection under the Act as a threatened species. The references this commenter provided are incorporated into the final SSA report.

Comment 40: One commenter stated that, in contrast to our focus in the SSA on the effects of climate change on whitebark pine habitat suitability (*i.e.,* where temperatures will exceed the thermal tolerance of the species), the primary adverse effect of climate change on whitebark pine is the relaxation of constraining conditions for competing conifers (Greenwood and Jump 2014, entire) and improved environment for insect predators (Logan and Powell 2001, entire; Logan et al. 2009, entire).

Our Response: In the SSA report, we acknowledge that climate change may result in conditions favorable to competing species (Service 2021, p. 60), and that warming temperatures created the unprecedented nature of the most recent mountain pine beetle outbreak (Service 2021, p. 52). Our analysis of the impacts of insect predators considers scenarios in which climate change would exacerbate the impacts of mountain pine beetles (Service 2021, pp. 97–98). We added the reference this commenter provided (Greenwood and Jump 2014, p. 835) to the relevant discussion of mountain pine beetles in the SSA report (Service 2021, p. 60). We already cite Logan and Powell (2001, p. 167) in the SSA report to support our discussion of climate change and insect predators (Service 2021, p. 52); the SSA cites Logan et al. (2010, p. 895), which is a more recent study with updated conclusions than Logan et al. (2009), the paper the commenter provided (Service 2021, p. 52). Given that these assumptions were already considered in the assessment and analysis, our determination that whitebark pine warrants protection under the Act as a threatened species remains unchanged.

Comment 41: A commenter stated that, contrary to our analysis, mature whitebark pine trees are not affected by climate change. This commenter claimed that mature whitebark pine have survived past climate cycles similar to the climate cycle we are currently experiencing; therefore, there is no science supporting the idea that climate change is associated with whitebark pine declines. The commenter also claimed that the proposed rule is speculative in stating that whitebark pine is unable to adapt as fast as competing plants to changing conditions. They asserted that whitebark pine survived a similar climate-cycle change in the 1930s and the Service did not provide any science or information explaining why other plants did not outcompete whitebark pine at that time. The commenter anecdotally noted that there are very few areas in Idaho with evidence of plant competition contributing to whitebark pine population declines; old mature trees have not been crowded out, but instead died due to predators or fire. The commenter did note that climate is associated with the length of the fire season, and longer fire seasons are associated with an increase in fire-killed whitebark pine.

Our Response: Our SSA report discusses the best available science on how climate change could affect whitebark pine, including the best available information regarding the species' ability to adapt to future changes in climate (Service 2021, pp. 57–63); this commenter did not provide any new research or references to support their claims that our assessment is inaccurate. Within the species' current range, future changes in climate will likely exceed the climatic variation the whitebark pine has experienced in the past century and will likely last longer. For example, using the A2 scenario (which assumes a global average surface warming of 6.1 degrees Fahrenheit (°F) (3.4 degrees Celsius (°C))), the USFS's climate envelope modeling projects that, by 2090, temperatures could increase 9.1 °F (5.1 °C) within the range of the species; this would cause whitebark pine's suitable climate to contract to the highest-elevation areas in the northern Shoshone National Forest and Greater Yellowstone Ecosystem, or could cause whitebark pine to be extirpated from these areas (Rice et al. 2012, p. 31).

As we discuss in greater detail in the SSA report (Service 2021, pp. 57–63), the pace of predicted climate change will outpace many plant species' abilities to respond to the concomitant habitat changes. Whitebark pine may be particularly vulnerable to warming temperatures because it is adapted to cool, high-elevation habitats. Therefore, current and anticipated warming is expected to make its current habitat unsuitable for whitebark pine, either directly or indirectly as conditions become more favorable to whitebark pine competitors, such as subalpine fir or mountain hemlock. The rate of migration needed to respond to predicted climate change will be significant (Malcolm et al. 2002, pp. 844–845; McKenney et al. 2007, p. 941). It is not known whether whitebark pine is capable of migrating at a pace sufficient to move to areas that are more favorable to survival as a result of climate change. It is also not known the degree to which Clark's nutcracker could facilitate this migration. In addition, the presence of significant white pine blister rust infection in the northern range of whitebark pine could serve as a barrier to effective northward migration. Whitebark pine survives at high elevations already, so there is little remaining habitat for the species to migrate to higher elevations in response to warmer temperatures. Adaptation in response to a rapidly warming climate could also be unlikely as whitebark pine is a long-lived species with a long generation time. Climate models project that climate change is expected to act directly and indirectly to significantly decrease the probability of rangewide persistence in whitebark pine within the next 100 years. This time interval is less than two generations for this long-lived species.

Comments on Other Stressors

Comment 42: Multiple commenters expressed concern about other stressors that they believed could further affect whitebark pine, including: (1) High levels of backcountry recreation on the John Muir Trail in the Sierra Nevada, which is leading to overcrowding campsites, illegal campfires, and human waste; (2) cross-country over-snow vehicle use (commenters provided several studies and examples of damage to whitebark pine trees from over-snow vehicle use); and (3) ski areas (commenters claimed that the proposed Mount Ashland Ski Area Expansion and other recreational activities in the Klamath-Siskiyou Mountains can result in the trampling of seedlings).

Our Response: We have concluded that the whitebark pine is likely to become endangered within the foreseeable future primarily due to the continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. White pine blister rust is not human-spread or influenced by human activity, and few restoration methods are currently available to restore whitebark pine in areas affected by the disease.

We acknowledge there are numerous other factors that operate on whitebark pine at local scales (see appendix B in the SSA report), affecting individuals or local areas, including recreation; however, these factors are likely not driving population dynamics of whitebark pine on a rangewide scale or at the species level (Service 2021, p. 34). According to the best available science the four stressors influencing the status of whitebark pine are white pine blister rust, altered fire regimes, mountain pine

beetle, and climate change (Keane and Arno 1993, p. 44; Tomback et al. 2001, p. 13; COSEWIC 2010, p. 24; Tomback and Achuff 2010, p. 186; Keane et al. 2012, p. 1; Mahalovich 2013, p. 2; Mahalovich and Stritch, 2013, entire; Smith et al. 2013, p. 90; GYWPMWG 2016, p. v; Jules et al. 2016, p. 144; Perkins et al. 2016, p. xi; Shanahan et al. 2016, p. 1; Shepherd et al. 2018, p. 138). While we recognize these concerns regarding localized recreation activities, we found no information suggesting that recreation is occurring or could occur at a scope or scale that would produce species-level declines. Therefore, we did not analyze recreation as a threat to whitebark pine in our determination of species' status.

However, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. As a result of these provisions in the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must initiate consultation with us. For example, before any approval of ski area expansions on Federal land, action agencies will need to consider whether this expansion may affect whitebark pine (or any listed species in the action area). If the activities may affect any listed species, the Federal agency must initiate consultation with us. Therefore, the section 7 consultation processes will ensure that recreational activities on Federal lands do not jeopardize the continued existence of whitebark pine or any other listed species.

Comment 43: A commenter claimed that we inadequately analyzed the impacts of whitebark pine decline on ecosystem integrity, given the whitebark pine's important role in community dynamics. This commenter also believed our analysis of individual threat factors under the Act was inadequate because it does not consider the complicated interplay between whitebark pine decline, impacts on Clark's nutcracker populations, stand and disturbance structure conducive to recolonization via Clark's nutcracker seed caching, seed-predator relationships, ectomycorrhizal fungi communities, stand-composition characteristics, and mountain pine beetle populations. They asserted that the concept of identifying a single primary factor driving the status of the species does not fulfill the intent of the Act, as it does not address the potential loss of these essential community relationships due to the cumulative decline of whitebark pine.

Our Response: In both the SSA report and this rule, we acknowledge and discuss the cumulative impacts of stressors on whitebark pine (Service 2021, pp. 110–116). Each of the stressors (white pine blister rust, altered fire regimes, mountain pine beetle, and climate change) acts individually and cumulatively on portions of the whitebark pine's range, and interactions between stressors have further exacerbated the species' decline and have reduced its resiliency; while we acknowledge white pine blister rust as the main driver of the species' status, we identify these synergistic interactions as a factor further influencing the threatened status of the species.

Additionally, Service policy calls for an ecosystem approach to carrying out programs for fish and wildlife conservation (59 FR 34273, July 1, 1994). The goal of this approach is to contribute to the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems when carrying out our various mandates and functions. Preserving and recovering endangered and threatened species is one of the more basic aspects of an ecosystem approach to conservation. Successful recovery of an endangered species or threatened species requires that the necessary components of its habitat and ecosystem be conserved, and that diverse partnerships be developed to ensure the long-term protection of those components. Thus, the recovery process for whitebark pine will inevitably involve this consideration of the synergistic community relationships the commenter references. That said, a desire to achieve or maintain ''ecological effectiveness'' (*i.e.,* occupancy with densities that maintain critical ecosystem interactions and help ensure against ecosystem degradation) (Soule et al. 2003, p. 1239) is not relevant to the Act's definitions of ''endangered species'' or ''threatened species,'' and is not one of the factors that we consider under the Act's section 4(a)(1) in making listing determinations.

Comment 44: A commenter claimed that because a recent assessment of threats to listed species found that habitat loss is often identified as a significant threat in most listing decisions, habitat loss must therefore be a significant threat to whitebark pine.

Our Response: We acknowledge that habitat loss is anticipated to occur across the range of whitebark pine due to the direct and indirect effects of climate change (Service 2021, p. 58). However, the habitat needs of whitebark pine are flexible and not specific, as evidenced by the fact that the species is extremely widespread, occupying a wide range of elevations, slopes, forest-community types, latitudes, and climates across its 32,616,422-ha (80,596,934-ac) range (Service 2021, pp. 14–16). In other words, habitat for whitebark pine is plentiful, and is not a limiting factor determining the distribution of the species. In addition, given that the vast majority of the species' range (88 percent) is on federal public lands and 29 percent of the species range is designated as wilderness, habitat loss due to human development or other direct destruction of habitat is less likely to occur in a large portion of the species' range. Therefore, we do not consider habitat loss as a primary threat driving the status of whitebark pine. In all three future scenarios analyzed in the SSA, the rate of decline appears to be most sensitive to the rate of white pine blister rust spread, the presence of genetically resistant individuals (whether natural or due to conservation efforts), and the level of regeneration (Service 2021, pp. 116–117). Given that white pine blister rust led to the largest rangewide reductions in viability in our analysis, and given that there is currently no known remedy, we identify white pine blister rust as the primary threat for this species. White pine blister rust also interacts with other stressors, including predation by mountain pine beetles, altered fire regimes, and climate change.

Comment 45: One commenter found that the proposed rule did not address the effects of the USFS's Roadless Area Conservation rule (66 FR 3244; January 12, 2001), despite the presence of non-wilderness roadless areas within the species' range. The commenter noted that the January 12, 2001, rule imposes significant constraints on the ability to harvest timber or reduce fuels in roadless areas. Relatedly, one commenter noted that the Service failed to analyze the effects of the USFS's Roadless Area Conservation; Applicability to the National Forests in Idaho rule (73 FR 61456; October 16, 2008) on whitebark pine or if listing the species would necessitate changes to that rule. The commenter stated that whitebark pine occurs in areas designated by the October 16, 2008, rule, and that rule classifies areas in several categories with varying management restrictions.

Our Response: As we discuss in appendix A of the SSA report, the remote and challenging terrain in which

whitebark pine frequently exists presents numerous logistical challenges for accessing sites for restoration. In non-wilderness roadless areas, much effort and costs may be required to transport equipment, seedlings, and personnel to work sites, whether by foot, livestock, or aerial means. Seasonal access to many sites is likely to be brief due to abbreviated snow-free conditions at high elevations, which often coincides with summer fire seasons. As the level of accessibility to whitebark pine stands decreases, so does the number of available restoration options (Keane et al. 2012, p. 89), meaning fewer options to restore affected stands in more difficult-to-access sites. Similar to our approach to wilderness areas, in planning for the recovery of whitebark pine, we will ensure our strategies and our partners' conservation efforts respect the standards and limitations of roadless areas, while identifying practical means to deliver effective restoration.

Comments on Section 4(d) Rule and Post-Listing Management

Comment 46: One commenter asserted that, because the proposed rule did not provide managements plans or actions for recovering the species, the rule itself had no effect or impact and did not provide a clear legal standard for affected parties; they claimed this was a violation of Executive Order (E.O.) 12988.

Our Response: Under the Act, we are to make listing determinations ''solely on the basis of the best scientific and commercial data'' (16 U.S.C. 1533(b)(1)(A)). Other considerations must not be a part of our listing decisions.

That said, we believe this rule is consistent with E.O. 12988 (Civil Justice Reform). This rule will not unduly burden the judicial system. In this rule, we determine that whitebark pine meets the definition of a threatened species under the Act. We also finalize a species-specific 4(d) rule that is designed to address the whitebark pine's specific threats and conservation needs. The provisions of the 4(d) rule provide clear regulations concerning prohibited and allowed activities that could affect whitebark pine; in doing so, the 4(d) rule presents a clear legal standard for affected parties. Further, it is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. Our 4(d) rule, described in detail in Provisions of the Final 4(d) Rule below, provides this information. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Additionally, section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. This listing rule does not need to include strategies for recovery of the species. Instead, the recovery-planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. For more information on the recovery-planning process, see Available Conservation Measures in this rule.

Comment 47: A commenter claimed that thinning and prescribed fire associated with whitebark pine management conflicted with best management practices for grizzly bear (*Ursus arctos horribilis*).

Our Response: As we discuss in the SSA report, in some cases, while restoring whitebark pine may prove beneficial in the long term, restoration activities may present short-term impacts for other species (Service 2021, p. 135). For example, while grizzly bears use whitebark pine seeds as a food source in many parts of their range, restoration activities, and the associated human presence during these, may negatively affect individual bears in the short term, even if the long-term goal is improving an important component of their habitat. In 2017, we issued a biological opinion to the Idaho Panhandle National Forest for a large-scale whitebark pine restoration project that was determined to ''likely adversely affect'' grizzly bears in the area via the use of chainsaws, helicopters, and prescribed fire, along with the prolonged presence of humans in the work area. It was determined that although the project may have short-term adverse effects on some bears, it would provide long-term beneficial effects and would not jeopardize the continued existence of grizzly bears.

More broadly, similar section 7 consultation processes will ensure that conservation efforts for whitebark pine do not jeopardize the continued existence of the grizzly bear or any other listed species. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. As a result of these provisions in the Act, if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must initiate consultation with us. Because both whitebark pine and grizzly bears will now be listed as threatened species, action agencies will need to consider whether their forest-management activities may affect either species, or any other listed species in the action area. If the activities may affect any listed species (including grizzly bears), even if their intended purpose is to benefit whitebark pine, the Federal agency must initiate consultation with us to evaluate these effects.

Comment 48: A commenter recommended modifying the proposed 4(d) rule to allow propagation and planting of rust-resistant whitebark pine on Federal lands.

Our Response: As proposed and as presented in this final rule, the 4(d) rule allows for propagation and planting of rust-resistant whitebark pine on Federal lands under its exception for restoration and research-related activities. However, the Federal agency with jurisdiction over the land where this planting would occur must also comply with all of the Act's section 7 consultation requirements relevant to this activity.

Comment 49: A commenter stated that the best tool for investigating the growth dynamics of long-lived trees is dendroecology, or tree-ring-based ecology, typically involving increment cores. They noted that this activity is considered non-destructive and that the potential risks are greatly outweighed by the insights that tree-ring data provide into stand dynamics, mortality history, and the effects of climate change. The commenter urged the Service not to restrict researchers' ability to collect such data should whitebark pine be listed.

Our Response: This rule does not prohibit researchers from collecting cores of whitebark pine for research purposes from State, Tribal, or private lands. If a researcher wishes to collect these cores from whitebark pine trees on Federal properties, this activity would be excepted from the prohibitions in the 4(d) rule under the exception that covers research-related activities. However, even though this activity is allowed under the 4(d) rule, the researcher may need to obtain a special

use permit from the Federal agency with jurisdiction over the area in which the researcher would like to collect cores before proceeding with their activity (*e.g.,* a special use permit from the USFS). Because the issuance of a special use permit for this purpose is a Federal action, the relevant Federal agency would also need to fulfill the Act's section 7(a)(2) consultation obligations with us to evaluate whether the issuance of this permit could jeopardize whitebark pine or any other listed species. However, given that no research-related activities, including collection of cores, pose any threat to whitebark pine at the species level, this likely would be a straightforward consultation.

Comment 50: Several commenters requested that an exception for utility vegetation management, operations and maintenance, and fire-fuel reduction efforts be added to the 4(d) rule or be clarified as included in the existing exceptions.

Our Response: We recognize the importance of continuing vegetation management for public safety and fire prevention. Given that the 4(d) rule only prohibits removal and malicious damage or destruction of the species on Federal lands, utility companies can continue to manage and operate utility lines on private or State lands, even if these activities affect whitebark pine, as long as there is no Federal nexus and as long as these activities are otherwise lawful. These vegetation-management activities do not present a threat to whitebark pine at the species level and may reduce the risk of high-severity fire through fuels reduction, which would benefit the species. Thus, we consider this utility vegetation management as part of ''forest-management'' activities, which means this maintenance activity for existing utility lines in Federal rights-of-way is covered by the exceptions to the prohibitions in this 4(d) rule, as long as this vegetation management is conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur and as long as this Federal agency has complied with all relevant section 7 consultation requirements in the Act. We added vegetation management of existing utility rights-of-way as an example of forest-management activities covered under the 4(d) rule in Provisions of the Final 4(d) Rule, below. Importantly, construction of new utility lines on Federal lands is not an excepted activity under the 4(d) rule (*i.e.,* it is not forest management); if that construction could result in prohibited removal or damage of whitebark pine, Federal agencies and associated utility companies would need to pursue appropriate permitting and consultation processes.

Comment 51: A commenter recommended that we clarify in the preamble to any final listing rule for the whitebark pine that, in most circumstances, reinitiation of consultation will not be required for vegetation-management activities occurring within rights-of-way for electric transmission, distribution, or renewable energy on Federal lands as of the effective date of the final rule.

Our Response: We recognize that relevant Federal agencies have already completed section 7 consultations to analyze the effects of construction and maintenance of utility lines in Federal rights-of-way on currently listed species. However, if these existing consultations do not consider the effects of these actions on whitebark pine, Federal agencies will need to reinitiate consultation on these ongoing vegetation-management activities if they may affect whitebark pine. Federal agencies are obligated to ensure that the activities that they authorize, such as maintenance of a utility line, do not jeopardize listed species, so they must reinitiate consultation if these existing consultations do not adequately examine whether these activities could jeopardize whitebark pine. However, as we discuss in our responses to *Comment 18* and *Comment 50,* above, these vegetation-management activities are excepted in the 4(d) rule because they do not present a threat to whitebark pine at the species level and may reduce the risk of high-severity fire, which would benefit the species. Thus, given that we find these types of activities would not present a species-level threat and may be beneficial, reinitiated consultation on the basis that these activities may affect the newly listed whitebark pine would likely be straightforward.

Comment 52: Two commenters requested that we expand the proposed 4(d) rule to permit active management of Federal forests.

Our Response: The 4(d) rule provides an exception to the prohibitions for all forest-management activities. Because no forest-management, restoration, or research-related activities pose any species-level threat to the whitebark pine in any form, we purposefully do not specify in detail what types of these activities are included in this exception, or how, when, or where they must be conducted, as long as they are conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur. Therefore, this 4(d) rule will allow the continuation of all forest-management, restoration, and research-related activities conducted by or authorized by relevant Federal land management agencies, as these activities pose no threat to the whitebark pine at the species level and can contribute to the species' conservation into the future.

However, while the 4(d) rule excepts forest-management activities because they do not present a species-level threat, section 7 concurrence or consultation will still be required if a forest-management activity with a Federal nexus may affect whitebark pine, even if this activity would only affect individual trees or populations.

Comment 53: Two commenters recommended we amend the proposed 4(d) rule to not allow for unlimited logging in whitebark pine habitat. Another commenter stated that the proposed 4(d) rule, including its provisions for logging, will increase intensity, rate of spread, and severity of fire.

Our Response: Whitebark pine is not commercially harvested, and while some human activities could potentially affect individual trees or local areas, we found no threats at the species level resulting from timber harvest or forest-management activities. In fact, forest-management activities can be important to maintaining the health and resiliency of forest ecosystems that include whitebark pine, including reducing the risk of fire. Thus, we provide an exception in the 4(d) rule for all forest-management activities. Because no forest-management, restoration, or research-related activities pose any threat to the whitebark pine in any form at the species level, we purposefully do not specify in detail what types of these activities are included in this exception, or how, when, or where they must be conducted, as long as they are conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur. However, even with this exception in the 4(d) rule, Federal agencies must comply with relevant section 7 consultation requirements for any forest-management, restoration, or research-related activities that may affect whitebark pine, including activities that may affect individual trees or populations. This exception in our 4(d) rule, and the section 7 consultation Federal agencies may complete, will facilitate the continuation of forest-management, restoration, and research-related activities conducted by or authorized by relevant Federal land management agencies, as these activities pose no threat to the whitebark pine at

the species level and can contribute to the species' conservation into the future.

Comments on Critical Habitat

Comment 54: While we received several comments supporting our proposal not to designate critical habitat for whitebark pine, a number of commenters recommended the species should receive critical habitat protections. One commenter asserted that we should designate critical habitat because the species is a foundation and keystone species. Multiple commenters claimed that we should be able to designate critical habitat, because we know the range of the species. Several commenters disagreed with the reasoning we used to support our ''not prudent'' determination. One commenter disagreed with our assessment that habitat is not limiting for whitebark pine. They stated that the species has a limited distribution due to the specific elevation, geography, and climate envelope it requires. They, and another commenter, assert that the range of whitebark pine could become more limited as climate change further limits suitable habitat. Another commenter claimed that we failed to explain why designation of critical habitat would not benefit the whitebark pine, which they claim is the only relevant consideration for invoking the ''not prudent'' exception. Even though they acknowledged that we may lawfully make a ''not prudent'' finding for reasons other than lack of benefit to whitebark pine, they claim that we still did not articulate why it would not be careful, circumspect, and cautious—*i.e.,* prudent—to designate critical habitat.

Some commenters provided specific suggestions for areas to include as critical habitat. Several commenters recommended we designate critical habitat in areas that provide a seed source, that have white pine blister rust resistance, where trees may be additionally threatened by ski area expansions, and where seedlings may be vulnerable to crushing by snowmobiles and off-road vehicles. Another commenter recommended we designate critical habitat in areas that are most likely to support whitebark pine in a changing climate, even if they are currently unoccupied, citing several studies indicating that lower-elevation conifers will shift upward into whitebark pine habitat as a result of climate change and changing fire return intervals. Another commenter recommended we develop spatial threat models for each of the significant threats to whitebark pine (*e.g.,* white pine blister rust, mountain pine beetle, and high-severity fire) to inform the designation of critical habitat.

Our Response: As we discussed in the proposed rule for this species (85 FR 77408; December 2, 2020), section 4(a)(3)(A) of the Act directs the Secretary of the Interior to designate critical habitat to the maximum extent prudent and determinable and therefore allows for the possibility that designation of critical habitat may not be prudent. Our regulations (50 CFR 424.12(a)(1)) further detail several reasons the Secretary of the Interior may determine that a critical habitat designation would not be prudent; these regulations provide for the regulatory, rather than colloquial, definition of prudency as it pertains to the designation of critical habitat. One of these circumstances under which we may determine that designation of critical habitat is not prudent is if the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species. We conclude that the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the whitebark pine, and therefore designating critical habitat is not prudent for the species.

Climate change presents challenges to this species, which we summarize in detail in the SSA report (Service 2021, pp. 57–63). Climate models project that climate change is expected to act directly and indirectly, regardless of the emission scenario, to significantly decrease the probability of rangewide persistence in whitebark pine within the next 100 years (*e.g.,* Warwell et al. 2007, p. 2; Hamann and Wang 2006, p. 2783; Schrag et al. 2007, p. 6; Rice et al. 2012, p. 31; Loehman et al. 2011, pp. 185–187; Chang et al. 2014, pp. 10–12). Whitebark pine may be particularly vulnerable to warming temperatures because it is adapted to cool, high-elevation habitats. Therefore, current and anticipated warming is expected to make its current habitat unsuitable for whitebark pine, either directly or indirectly as conditions become more favorable to whitebark pine competitors, such as subalpine fir or mountain hemlock (Bartlein et al. 1997, p. 788; Hamann and Wang 2006, p. 2783; Schrag et al. 2007, p. 8; Warwell et al. 2007, p. 2; Aitken et al. 2008, p. 103; Loehman et al. 2011, pp. 185–187; Rice et al. 2012, p. 31; Chang et al. 2014, p. 10; Hansen and Phillips 2015, p. 74).

However, we recognize that there are many limitations to such modeling techniques, specifically for whitebark pine. For example, climate-envelope models use current environmental conditions in the distribution of the species' range to determine whether similar environmental conditions will be available in the future given predicted climate change. Whitebark pine, however, is a very long-lived species, and current environmental conditions may not closely resemble environmental conditions present when the trees currently on the landscape were established (Service 2021, p. 62). Additionally, these models also describe current environmental variables in averages taken over large areas. Whitebark pine may experience very different environmental conditions even over a small range, as individuals can be separated by thousands of meters (Service 2021, p. 62).

Thus, we acknowledge that climate change (Factor E) can present a threat to the whitebark pine, especially given that the impacts of climate change interact with and exacerbate other stressors such as mountain pine beetle (Factor C) and altered fire regimes (Factor E). However, in all three future scenarios analyzed in the SSA, the rate of whitebark pine decline appeared to be most sensitive to the rate of white pine blister rust spread, the presence of genetically resistant individuals (whether natural or due to conservation efforts), and the level of regeneration (Service 2021, pp. 116–117). Given that white pine blister rust led to the largest rangewide reductions in viability in our analysis, and given that there is currently no effective management action to reverse its effects on a meaningful scale, we identified white pine blister rust (disease, Factor C) as the primary threat for this species.

Furthermore, as we describe in further detail in our proposed rule (85 FR 77408; December 2, 2020), we do not view habitat as limiting for whitebark pine, which is widely distributed over a range of 32,616,422 ha (80,596,935 ac) (Service 2021, pp. 14–16); moreover, the habitat needs of the species are flexible and not specific (Service 2021, pp. 22–28). Therefore, we do not consider the present or threatened destruction, modification, or curtailment of a species' habitat or range to be a threat to the species.

Given that we determined that the present or threatened destruction, modification, or curtailment of the species' habitat or range is not a threat to the whitebark pine, under 50 CFR 424.12(a)(1) we may, but are not required to, determine that designation of critical habitat is not prudent. In light of the particular circumstances of the whitebark pine, we have in fact determined that designation of critical habitat is not prudent. We reach this conclusion largely because of the nature

of the threats to this species, with the main driver of species' status being disease (white pine blister rust). Designation of critical habitat would not provide any additional protective measures or benefits that address this specific threat. In fact, designation of critical habitat could create an additional regulatory burden that could detract from efforts to propagate rust-resistant trees or to apply other management prescriptions to address the fungal disease. Designation of critical habitat would also not provide otherwise unavailable information to guide conservation efforts for the species. Therefore, a designation of critical habitat would not be advantageous for the species. We conclude that designation of critical habitat is not prudent for whitebark pine.

Comment 55: Several commenters recommended we should designate critical habitat because it could be a helpful tool to plan for conservation and prioritize management. Commenters provided several examples of the benefits that designation of critical habitat could provide, including, but not limited to, the identification of priority areas for conservation and regeneration, stimulation of funding for conservation, and identification of management prescriptions to protect and recover the species.

Our Response: While we recognize the potential benefits these commenters present, we view most of these positive outcomes as benefits of listing whitebark pine, rather than benefits of designating critical habitat. While we cannot consider these benefits of listing in our determination of status, we acknowledge that the listing will assist our partners in the conservation and recovery of this species. Once a species is listed as either endangered or threatened, the Act provides many tools to advance the conservation of listed species. Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals.

The listing itself and the recovery-planning process for the species will provide these benefits independent of critical habitat designation, especially because the main stressor driving the status of the species is disease, not habitat destruction or modification. The recovery plan and future conservation efforts for this listed species can contemplate and encourage activities that address this main threat (*i.e.,* white pine blister rust) without designation of critical habitat. For example, the recovery-planning process can identify priority areas for conservation, develop strategies to promote the conservation of genetic diversity and preservation of rust-resistant traits, propose ways to aid the species' adaptation to climate change, provide objectives for future research, provide guidance to Federal agencies on appropriate areas to reduce disturbance and productive ways to advance whitebark pine conservation in management plans, and clearly articulate management strategies that State and local governments can employ to conserve the species. Additionally, the listing will make funding under section 6 of the Act available for species conservation, independent of any critical habitat designation. Finally, the protective regulations in our 4(d) rule, rather than critical habitat designation, provide the regulatory measures necessary to adequately protect the species and encourage research and management to address white pine blister rust and other threats facing the species. Because we determined that the present or threatened destruction, modification, or curtailment of the species' habitat or range is not a threat to the whitebark pine, designation of critical habitat is not necessary to protect against habitat degradation.

Comment 56: One commenter indicated that identifying and protecting critical habitat is a foundational tenet in both the USFS's Rangewide Restoration Strategy for Whitebark Pine and the Canadian SARA Recovery Strategy for the Whitebark Pine in Canada. By implementing critical habitat protections, the Service stands to bolster the efforts of programs such as the National Whitebark Pine Restoration Spatial Data Archive as they strive to provide a centralized hub of methods and data-management services to enable local land managers and scientists to collect and utilize the necessary inventory data.

Our Response: The recovery-planning process can effectively leverage the work of the National Whitebark Pine Restoration Spatial Data Archive and provide a clear roadmap for recovery that is based on the best available science. Given that the present or threatened destruction, modification, or curtailment of the species' habitat or range is not a threat to the whitebark pine, we have determined that designation of critical habitat is not prudent. We do not need to designate critical habitat to promote conservation of this species. We will use the recovery-planning process to encourage activities that address the threats and conservation needs of this species. This recovery-planning process will involve relevant stakeholders and build on existing conservation strategies and research.

Comments About Listing Process and Policy

Comment 57: One commenter asked whether hybridization with other five-needle pines (*i.e.,* gene splicing) would allow the resultant trees to be considered whitebark pine and whether they would thus be protected under the Act.

Our Response: We are not aware of any viable hybridization between whitebark pine and other white pine species. While there was a suspected hybrid between whitebark pine and limber pine in Montana, this was a rare occurrence and resultant individuals were infertile (Fryer 2002, unpaginated).

Comment 58: A county expressed concern that they were not contacted during the assessment of whitebark pine's status nor invited to any conversations to discuss the potential listing.

Our Response: We worked with Federal, State, and other partners who were actively involved in broad-scale whitebark pine management or who had relevant scientific expertise on the species in the development of the SSA for whitebark pine prior to our decision to propose listing the species under the Act. The development of the SSA is not a process whereby outside parties can influence the listing decision; the decision to list a species under the Act rests with the Director of the Service alone (as delegated by the Secretary of the Interior) and must be made based on the best scientific and commercial data available. We notified all relevant counties when the proposed rule published, consistent with the requirements in 50 CFR 424.16(c)(10)(ii). The 60-day comment period for our December 2, 2020, proposed rule (85 FR 77408) provided sufficient opportunity for the public to provide input on the potential listing of the whitebark pine.

Comment 59: One commenter claimed this rule did not complete the required Office of Information and Regulatory Affairs (OIRA) review, violating E.O. 12866.

Our Response: Under E.O. 12866, OIRA within the Office of Management and Budget (OMB) has the authority to review ''significant regulatory actions'' that fall into one of the following categories: (1) Have an annual effect on

the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Act clearly prohibits us from considering economic or similar information when making listing, delisting, or reclassification decisions. Congress added this prohibition in the 1982 amendments to the Act when it introduced into section 4(b)(1) an explicit requirement that all determinations made under section 4(a)(1) of the Act be based ''solely on the basis of the best scientific and commercial data available.'' Congress further explained this prohibition in the Conference Report accompanying the 1982 amendments to the Act (H.R. Conf. Rep. No. 97–835, at 19 (1982)).

The 1982 amendments were clear that we should avoid any consideration of non-biological information in the decision and should not introduce any additional delay in finalizing classification decisions. It has been our long-standing position that OMB does not have the authority to review classification rules under E.O. 12866 and that all phases of the classification process are exempt from the requirements of E.O. 12866; therefore, promulgating this final classification decision does not violate E.O. 12866.

Determination of Whitebark Pine Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the whitebark pine across its range in the United States and Canada. Our analysis of the current and future condition of whitebark pine found that four main stressors are affecting the species: White pine blister rust (Factor C), mountain pine beetle (Factor C), altered fire regimes (Factor E), and climate change (Factor E). We found white pine blister rust (Factor C) to be the main driver of the species' current and future condition. White pine blister rust is currently ubiquitous across the range, and under all three future condition scenarios, it is expected to expand significantly. Under the three scenarios, within one generation, 52 to 88 percent of the range will be infected. The impacts of white pine blister rust combined with other stressors will reduce the ability of whitebark pine stands to regenerate (*i.e.,* resiliency) following disturbances, such as fire and mountain pine beetle outbreaks. The decline is expected to be most pronounced in the northern two-thirds of the whitebark pine's range, where white pine blister rust infection rates are predicted to be highest. Despite the existing regulatory mechanisms (Factor D) and voluntary conservation efforts summarized above in *Conservation Efforts and Regulatory Mechanisms* and discussed in additional detail in the SSA report (Service 2021, pp. 119–125), these stressors have continued to spread and are predicted to increase in prevalence in the future. Our analysis did not find any stressors to be affecting the species at a population or species level under Factors A or B.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the whitebark pine is likely to become endangered throughout all of its range within the foreseeable future. This finding is based on anticipated reductions in resiliency, redundancy, and representation in the foreseeable future as a result of a continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. Specifically, based on the projections of how white pine blister rust, mountain pine beetle, and high-intensity fire could increase in scope, it is likely the species will lose a large number of reproductive adults in the foreseeable future; this loss of reproductive trees will lead to a substantial decline in the establishment of new seedlings, meaning new trees will not be able to replace lost trees sufficiently quickly given the species' long generation time. White pine blister rust is already ubiquitous rangewide, and there is currently no effective method to reverse its effects on a meaningful scale. In addition, 51 percent of whitebark pine trees in the United States are now dead (Goeking and Izlar 2018, p. 7). We conclude that within one generation of whitebark pine, the resiliency, redundancy, and representation of the species are likely to be so reduced that the species may not be able to produce another generation that has long-term viability.

For this long-lived species, we consider the foreseeable future to be at least 40 to 80 years into the future. This timeframe encompasses the full range of variation for the length of one generation for whitebark pine. In order to understand future extinction risk for the whitebark pine, we needed to examine the effects of stressors at least one generation into the future; considering effects of stressors over at least one generation allows us to capture the effects of these stressors on reproduction (*i.e.,* it allows us to discuss whether sufficient reproduction can occur in the future to replace trees lost to various stressors). While we were able to project the extent of stressors more than one generation into the future (*i.e.,* 180 years into the future) in our SSA, we simply extrapolated various rates of spread for three whitebark pine generations. Regardless of how far into the future we could extrapolate the expanding scope of stressors, our confidence is greatest with respect to the range of plausible projected changes to stressors for one generation due to increasing uncertainties in the interplay between disease and species' response further into the future (*e.g.,* uncertainties regarding effects on species' genetics in the next generation of trees and how this would affect species' response to stressors, specifically white pine blister rust, in subsequent generations; uncertainties regarding compounding effects on reproduction after the next generation of trees). We can reasonably determine that both the future threats and the species'

responses to those threats are likely within this 40- to 80-year timeframe (*i.e.,* the foreseeable future), and we can reasonably rely on predictions over this timeframe in determining the future conservation status of the whitebark pine. We conclude that the ongoing losses to the resiliency, redundancy, and representation of the whitebark pine will result in it becoming in danger of extinction within this foreseeable future.

We find that the whitebark pine is not currently in danger of extinction because the species is still widespread throughout its extensive range, because a large number of trees will continue to thrive and reproduce for decades (given the species' long lifespan), and because there are some levels of genetic resistance to white pine blister rust across the range. The species' current levels of resiliency rangewide provide sufficient ability to withstand stochastic events such that it is not currently at risk of extinction. In addition, although there is uncertainty regarding how quickly white pine blister rust, the primary stressor, will spread within the three southwestern AUs (the Sierras, Basin and Range, and Klamath Mountains AUs) in the future, white pine blister rust currently occurs at low levels in these areas, adding to the whitebark pine's current resiliency. In addition, the species currently has sufficient redundancy and representation to withstand catastrophic events and maintain adaptability to changes, particularly in the southwestern part of the range, and is not at risk of extinction now. However, we expect that the stressors, individually and cumulatively, will reduce resiliency, redundancy, and representation within all parts of the range within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we determine that the whitebark pine is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter Final Policy; 79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, following the court's holding in *Everson,* we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction now in that portion (*i.e.,* endangered).

In undertaking this analysis for the whitebark pine, given the species' extremely wide range and because the range of this species can theoretically be divided into portions in an infinite number of ways, we first identified portions that may warrant further review as a potentially significant portion of the range in which the species may be endangered. To do this, we first identified any portions of the range that may be both significant and in danger of extinction. We considered information pertaining to the geographic distribution of both the species and the threats that the species faces to identify these potentially significant portions of the range where the species may be endangered.

For each of these potentially significant portions of the range, we then further examined whether the portion is significant or whether the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first for these potentially significant portions of the range. We can choose to address either question first. In our analysis below, we address the significance question first for one potential portion and the status question first for another. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In examining the status question, we note that the statutory difference between an endangered species and a threatened species is the time frame in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we reviewed the best scientific and commercial data available regarding the time horizon for the threats that are driving the whitebark pine to warrant listing as a threatened species throughout all of its range. To determine whether whitebark pine was in danger of extinction in a particular portion of the species' range, we then considered whether these threats or their effects are currently occurring (or may imminently occur) in the portion with sufficient magnitude that the species is in danger of extinction now in that portion of its range. We examined the following threats: White pine blister rust, mountain pine beetle, altered fire regimes, and climate change, including synergistic and cumulative effects.

To determine whether a portion was ''significant,'' we considered how the portion contributes to the viability of the species. There are multiple ways in which a portion of the species' range could contribute to the viability of a species, including (but not limited to) by serving a particular role in the life history of the species (such as the breeding grounds or food source for the species), by including high-quality or unique-value habitat relative to the rest of the habitat in the range, or by representing a large percentage of the range.

During the first phase of our analysis, we identified two portions of the whitebark pine's range that warranted further consideration: the U.S. Canadian Rockies AU and the northern two-thirds of the range (which includes the following AUs: Nechako Plateau, Fraser Plateau, Thompson Plateau, Columbia Mountains, Canadian Rockies, Olympics, Cascades, Northern Rockies, Blue Mountains, Idaho Batholith, U.S. Canadian Rockies, and Middle Rockies (see Service 2021, figures 9, 11, 14)). We primarily identified these portions as necessitating further review because of the currently high incidence of white pine blister rust (the main driver of the species' status) in these portions of the range; these infection rates, and correspondingly large proportions of standing dead, could increase current extinction risk in these portions. Specifically, the U.S. Canadian Rockies AU currently has the highest proportion of white pine blister rust infection of any AU; white pine blister rust infects almost 74 percent of the AU. In addition, considering the range at a larger scale, white pine blister rust infection rates are currently the highest in the northern two-thirds of the whitebark pine's range. Having identified two portions that necessitated further review as potentially significant portions of the range in which whitebark pine may be in danger of extinction, we proceeded to further

examine either the significance or status question for each of these two portions.

For the U.S. Canadian Rockies AU, we chose to further examine the significance question first. Although every AU provides some contribution to the species' resiliency, representation, and redundancy, this AU only covers 6.6 percent of the species' vast range. In addition, we are not currently aware of any particular life-history functions that the AU serves or unique characteristics of the U.S. Canadian Rockies AU that are contributing meaningfully to the species' overall resiliency and representation, within the context of a ''significant portion of its range'' analysis. For example, although this AU is contiguous with other portions of the range, it is not operating as a source of seeds enhancing the resiliency of non-connected populations given the high incidence of disease and limited dispersal distance of Clark's nutcrackers. While continued restoration efforts will still be important in this AU, as in all portions of the species' range, this portion, by itself, will have only a minor impact on the overall viability of the species and, therefore, cannot be significant and cannot provide a basis for listing the entire species as endangered.

For the portion that constituted the northern two-thirds of the species' range, we chose to further examine the status question first (*i.e.,* we chose to first evaluate whether the species is in danger of extinction now in this portion). As described above under Summary of Biological Status and Threats, white pine blister rust is more prevalent in the northern two-thirds of the species' range. The impacts of white pine blister rust combined with other stressors are expected to reduce the ability of whitebark pine stands to regenerate following disturbances. While we found differences in the prevalence of white pine blister rust in this portion of the whitebark pine's range, the timing of the effects of the threats and the species' responses to the threats in that portion are the same as that for the entire range—the foreseeable future. Despite the prevalence of white pine blister rust and other stressors in the northern two-thirds of the whitebark pine's range, whitebark pine trees are still widespread throughout this extensive geographic area. Given their long lifespan and the presence of some levels of genetic resistance to white pine blister rust, whitebark pine trees are expected to persist on the landscape for many decades. As we discuss above, white pine blister rust may not immediately kill infected trees; many trees with white pine blister rust can live for decades before they succumb to the disease. Although the prevalence of the white pine blister rust threat to the whitebark pine is higher in the northern two-thirds of the species' range, the best scientific and commercial data available do not indicate that the species' responses to those threats are more immediate in the northern two-thirds of the species' range. Thus, we determine that the species is not in danger of extinction now in that portion of its range.

Therefore, after evaluating the U.S. Canadian Rockies AU and the northern two-thirds of the species' range, we determine that the species is not in danger of extinction now in any significant portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the whitebark pine meets the Act's definition of a threatened species. Therefore, we are listing the whitebark pine as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of those conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery-planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline that we make available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The plan may be revised to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/program/endangered-species*), or from our Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. When this listing becomes effective,

funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of California, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming will be eligible for Federal funds to implement management actions that promote the protection or recovery of the whitebark pine. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery-planning purposes (see **FOR FURTHER INFORMATION CONTACT**, above).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must initiate consultation with us, even if these activities are excepted under the 4(d) rule described below.

Federal agency actions within the species' habitat that may require conference or consultation or both, as described in the preceding paragraph, include management and any other landscape-altering activities on Federal lands. We discuss this requirement in greater detail under Summary of Comments and Recommendations, above.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [S]he may, for example, permit taking, but not importation of such species, or [s]he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a final rule that is designed to address the whitebark pine's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the whitebark pine.

As discussed above under Determination of Whitebark Pine Status, we have concluded that the whitebark pine is at risk of extinction within the foreseeable future primarily due to the continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. The provisions of this final 4(d) rule will promote conservation of the whitebark pine by encouraging management of the landscape in ways that meet land management considerations while also addressing the conservation needs of the whitebark pine, as explained further below. The provisions of this 4(d) rule are one of many tools that we will use to promote the conservation of the whitebark pine.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must initiate consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency).

Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. If a Federal action may affect a listed species, section 7(a)(2) requires consultation to ensure that the activity is not likely to jeopardize the species to satisfy the requirements in section 7(a)(2) of the Act, regardless of the substance of any applicable 4(d) rule. Thus, if a Federal agency's action may affect whitebark pine, it must fulfill section 7(a)(2) consultation obligations in accordance with 50 CFR part 402. Unless we concur with a Federal agency's determination that its action is not likely to adversely affect a listed species, formal consultation with us is required on all actions that may affect a listed species, even if the action will not result in a violation of a prohibition under the 4(d) rule. For instance, although removal and reduction to possession of whitebark pine in the course of forest management conducted by a Federal agency are not prohibited under the 4(d) rule, these types of activities are still subject to 7(a)(2) consultation requirements if they may affect the species. Additionally, if a Federal agency determines that its action is not likely to adversely affect a listed species or its critical habitat, it must still receive our written concurrence, even if its activity, and the result of its activity, are not prohibited by the 4(d) rule.

Even though section 4(d) rules do not remove or alter Federal agencies' section 7 consultation obligations, a section 4(d) rule can facilitate simplification of formal consultations. For example, as noted in our August 27, 2019, final rule regarding prohibitions for threatened species (84 FR 44753), in choosing to except removal, damage, or destruction associated with certain activities in a 4(d) rule, we have already determined that these activities are compatible with the species' conservation, which can streamline our analysis of whether an action would jeopardize the continued existence of the species, making consultation more straightforward and predictable. We are developing tools to streamline consultation on Federal actions that may affect the whitebark pine and are consistent with the provisions of the 4(d) rule.

Provisions of the Final 4(d) Rule

As discussed above under Summary of Biological Status and Threats, white pine blister rust, mountain pine beetle, altered fire regimes, and the effects of climate change are affecting the status of whitebark pine. The final 4(d) rule provides for the conservation of the species by use of protective regulations, as described here. Within the United States, the vast majority of the species' range (approximately 88 percent) is located on Federal lands. Given the reductions in resiliency that have already occurred to varying degrees across the range (Service 2021, pp. 68–83), we are applying prohibitions equivalent to those of section 9(a)(2) of the Act to the whitebark pine. Specifically, this final 4(d) rule provides for the conservation of whitebark pine by prohibiting the following activities, unless otherwise authorized or permitted (*e.g.,* allowed for in an exception or authorized in a section 10(a)(1)(A) permit):

- Import or export of the species;
- Delivery, receipt, transport, or shipment of the species in interstate or foreign commerce in the course of commercial activity;
- Sale or offer for sale of the species in interstate or foreign commerce;
- Removal and reduction to possession of the species from areas under Federal jurisdiction;
- Malicious damage or destruction of the species on any area under Federal jurisdiction; and
- Removal, cutting, digging up, or damage or destruction of the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

These prohibitions and the exceptions described below apply to whitebark pine trees and any tree parts (such as cones, tree cores, seeds, branches, needles, etc.). The final 4(d) rule only addresses Federal requirements under the Act and does not change any prohibitions provided for by State law.

The following activities are excepted from the prohibitions identified above:

- Activities authorized by a permit under 50 CFR 17.72;
- Forest-management, restoration, or research-related activities conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur;
- Removal, cutting, digging up, or damage or destruction of the species on areas under Federal jurisdiction by any qualified employee or agent of the Service or State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, when acting in the course of official duties; and
- Collection of whitebark pine seeds from areas under Federal jurisdiction for Tribal ceremonial use or traditional Tribal consumption if the collection is conducted by members of federally recognized Tribes and does not violate any other applicable laws and regulations.

The prohibitions in this final 4(d) rule related to removing and reducing to possession and to maliciously damaging and destroying apply only to areas under Federal jurisdiction. The prohibition related to removing, cutting, digging up, or destroying the species in other areas (*i.e.,* areas not under Federal jurisdiction) applies only if those activities are in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. Therefore, the exceptions to these prohibitions, other than the permitting exception, only apply to areas under Federal jurisdiction. We still encourage forest-management, restoration, and research-related activities on areas outside of Federal jurisdiction such as State, private, and Tribal lands within the United States or any lands within Canada; this 4(d) rule will not alter managers' ability to conduct these activities on non-Federal lands because the 4(d) rule does not prohibit these activities in the first place (unless these activities are already prohibited by State law or regulation).

We have concluded that the whitebark pine is likely to become endangered within the foreseeable future primarily due to the continued increase in white pine blister rust infection and associated mortality, synergistic and cumulative interactions between white pine blister rust and other stressors, and the resulting loss of seed source. This fungal disease is not human-spread or influenced by human activity, and few restoration methods are currently available to restore whitebark pine in areas affected by the disease. The whitebark pine is not commercially harvested, and while some human activities could potentially affect individual trees or local areas, we found no threats at the species level resulting from forest-management activities. In fact, forest-management activities can be important to maintaining the health and resiliency of forest ecosystems that include whitebark pine.

As described in the SSA report (Service 2021, pp. 125–131), most current whitebark pine management and research focuses on producing trees with inherited (genetic) resistance to

white pine blister rust, as well as implementing mechanical treatments and prescribed fire as conservation tools. As part of this process, cones may be collected from trees identified as apparently resistant to white pine blister rust, or ''plus'' trees. Additional areas of research involve investigating natural regeneration and silvicultural treatments, such as appropriate site selection and preparation (*i.e.,* identifying areas where restoration will be most effective), pruning, and thinning to protect high-value genetic resources, increase reproduction, reduce white pine blister rust damage, and increase stand volume (Zeglen et al. 2010, p. 361).

Conservation measures for whitebark pine can generally be categorized as either protection (of existing healthy trees and stands) or restoration (of damaged, unhealthy, or extirpated trees and stands). Inventory, monitoring, and mapping of whitebark pine stands are critical for assessing the current status and implementing strategic conservation strategies. The precise nature of management, restoration, and research activities that are conducted may vary widely across the broad range of whitebark pine, as management of this species falls under numerous jurisdictions that encompass a spectrum of local and regional ecological, climatic, and management conditions and needs.

Broadly, the forest-management, restoration, or research-related activities referred to above may include, but are not limited to, silviculture practices and forest-management activities that address fuels management, insect and disease impacts, vegetation management in existing utility rights-of-way, and wildlife-habitat management (*e.g.,* cone collections, planting seedlings or sowing seeds, mechanical cuttings as a restoration tool in stands experiencing advancing succession, full or partial suppression of fires in whitebark pine communities, allowing fires to burn, survey and monitoring of tree health status).

Because no forest-management, restoration, or research-related activities pose any threat to the whitebark pine at the species level, we purposefully do not specify in detail what types of these activities are included in this exception, or how, when, or where they must be conducted, as long as they are conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur; these activities may also vary in how they are conducted across the species' wide range. Therefore, this final 4(d) rule, and any relevant future section 7 consultations Federal agencies will conduct on their activities, will likely facilitate the continuation of forest-management, restoration, and research-related activities conducted by or authorized by relevant Federal land management agencies, as long as we reach the conclusion that these activities will not jeopardize the species, because these activities pose no threat to the whitebark pine at the species level and can contribute to the species' conservation into the future; this exception, and any relevant future section 7 consultations, also allow for flexibility to accommodate specific physical conditions, resource needs, and constraints across the species' vast range.

Similarly, collection of seeds by members of federally recognized Tribes for ceremonial use or traditional consumption does not present a threat to the species. The limited amount of collection Tribal members will conduct on Federal lands in certain parts of the species' range will not have species-level impacts, especially considering that many stands of whitebark pine are inaccessible for collection. Tribes within the range of the whitebark pine are important partners in the recovery of this culturally significant species; allowing Tribes to collect whitebark pine seeds for ceremonial and traditional use will only further their commitment to and participation in whitebark pine conservation.

We may also issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. That regulation also states that the permit shall be governed by the provisions of section 17.72 unless a special rule applicable to the plant is provided in sections 17.73 to 17.78. On August 27, 2019, we revised section 17.71 to provide that section 17.71 will no longer apply to plants listed as threatened after September 26, 2019 (84 FR 44753). We did not intend for those revisions to limit or alter the applicability of the permitting provisions in section 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of section 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings section 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states that the permit shall be governed by the provisions of section 17.32 unless a special rule applicable to the wildlife, appearing in sections 17.40 to 17.48, provides otherwise. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the whitebark pine that may result in otherwise prohibited activities without additional authorization.

For the reasons discussed above, we find that this rule under section 4(d) of the Act is necessary and advisable to provide for the conservation of the whitebark pine. This final 4(d) rule enhances the conservation of whitebark pine by prohibiting activities that would be detrimental to the species, while allowing the forest-management, restoration, and research-related activities that are necessary to conserve whitebark pine; these forest-management, restoration, and research-related activities maintain and restore forest health on the Federal lands that encompass the vast majority of the

species' habitat within the United States. Moreover, this 4(d) rule will allow activities that do not present a threat to the species to continue; specifically, it will allow Tribes to continue collecting this culturally important species for traditional or ceremonial purposes.

However, notwithstanding the provisions in this 4(d) rule, Federal agencies must comply with relevant section 7 consultation requirements for all Federal actions, including any forest-management, restoration, or research-related activities, that may affect whitebark pine, including activities that may affect individual trees or populations. Nothing in this 4(d) rule will change in any way the recovery-planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of whitebark pine. However, interagency cooperation may be further streamlined through planned programmatic consultations or other tools for the species between Federal agencies and the Service.

III. Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

In this final rule, we affirm the determinations we made in our December 2, 2020, proposed rule (85 FR 77408) concerning the prudency and determinability of critical habitat for the whitebark pine. Habitat is not a limiting factor for this species, and there are no significant habitat-based threats that are now or would in the future limit habitat for the whitebark pine. In light of the particular circumstances of the whitebark pine, we have determined that designation of critical habitat is not prudent. We reach this conclusion largely because of the nature of the threats for this species—the main driver of the species' status is disease (white pine blister rust). Designation of critical habitat would not provide any additional protective measures or benefits that address this specific threat. In fact, designation of critical habitat could create an additional regulatory burden that could detract from efforts to propagate rust-resistant trees or to apply other management prescriptions to address the fungal disease. Nor would designation of critical habitat provide otherwise unavailable information to guide conservation efforts for the species. Therefore, a designation of critical habitat would not be advantageous for the species. For more information on the rationale for our determination that designation of critical habitat is not prudent, see the December 2, 2020, proposed rule (85 FR 77408).

We note that because the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the whitebark pine, designation of critical habitat would not be beneficial to the species. Therefore, we would also conclude that designation of critical habitat is not prudent for the whitebark pine under the regulations in effect prior to those published on August 27, 2019 (84 FR 45020).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information from Tribes within the range of whitebark pine to inform the development of our SSA and notified Tribes of the proposed listing determination. We also provided these Tribes the opportunity to review a draft of the SSA report and provide input prior to making our proposed determination on the status of the whitebark pine. We received comments from two Tribes, the Nez Perce Tribe and the Confederated Salish and Kootenai Tribes, on the December 2, 2020, proposed rule (85 FR 77408). We continued to coordinate with Tribes throughout the development of this final determination to ensure we understood and addressed their comments on the proposed rule. Thus, we have fulfilled our relevant responsibilities.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Wyoming Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and

recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12, in paragraph (h), by adding an entry to the List of Endangered and Threatened Wildlife for ''*Pinus albicaulis*'' in alphabetical order under CONIFERS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
CONIFERS				
* * * * * * *				
Pinus albicaulis	Whitebark pine	Wherever found	T	87 FR [Insert **Federal Register** page where the document begins], 12/15/2022; 50 CFR 17.74(a).[4d]
* * * * * * *				

■ 3. Add § 17.74 to read as follows:

§ 17.74 Special rules—conifers and cycads.

(a) Whitebark pine (*Pinus albicaulis*).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to whitebark pine, except as provided under paragraph (a)(2) of this section:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.61(c)(1) for endangered plants.

(iii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(v) Sell or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to the whitebark pine, you may:

(i) Conduct activities as authorized by permit under § 17.72.

(ii) Conduct forest-management, restoration, or research-related activities conducted or authorized by the Federal agency with jurisdiction over the land where the activities occur.

(iii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.71(b).

(iv) Collect whitebark pine seeds from areas under Federal jurisdiction for Tribal ceremonial use or traditional Tribal consumption, provided that:

(A) The collection is conducted by members of federally recognized Tribes; and

(B) The collection does not violate any other applicable laws and regulations.

(b) [Reserved]

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–27087 Filed 12–14–22; 8:45 am]

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